
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 abuser 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 defined in section 586-1;

15 provided that the term "intimate" has no romantic connotations.

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

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 or have filed on behalf of a
5 minor or incapacitated person who has a current or
6 former intimate partner relationship;

7 (2) The party who is filing, initiating, advancing, or
8 continuing the litigation has been found by a court to
9 have committed intimate partner violence against the
10 other party including by a temporary restraining order
11 or order for protection that the court found was
12 necessary due to domestic violence or the parties had
13 agreed to an order for protection in a case of
14 domestic violence pursuant to:

15 (A) A criminal conviction or a plea of nolo
16 contendere, in the State or any other
17 jurisdiction for any of the crimes identified in
18 sections 709-906, 711-1106, or 711-1106.5; or a
19 filing for any offense related to a domestic
20 violence offense;



- 1 (B) A pending criminal charge, in the State or any
- 2 other jurisdiction, of domestic violence, as a
- 3 result of which a court has imposed criminal
- 4 conditions of release pertaining to the safety of
- 5 the victim;
- 6 (C) A temporary restraining order issued pursuant to
- 7 section 586-4;
- 8 (D) An order for protection issued pursuant to
- 9 section 586-3;
- 10 (E) A protective order issued pursuant to section
- 11 586-5.5;
- 12 (F) A no contact order pursuant to section 709-
- 13 906(4);
- 14 (G) A foreign protective order credited pursuant to
- 15 section 586-21;
- 16 (H) An order or decree issued pursuant to section
- 17 571-46 or section 580-74; or
- 18 (I) A signed affidavit from a domestic violence or
- 19 sexual assault agency that assists victims of
- 20 domestic violence and sexual assault;



1 (3) The litigation is being initiated, advanced, or
2 continued primarily for the purpose of harassing,
3 intimidating, or maintaining contact with the other
4 party; and

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

6 (A) Claims, allegations, and other legal contentions
7 made in the litigation are not warranted by
8 existing law or a good faith argument for the
9 extension, modification, or reversal of existing
10 law or the establishment of new law;

11 (B) Allegations and other factual contentions made in
12 the litigation are without the existence of
13 evidentiary support; or

14 (C) An issue or issues that are the basis of the
15 litigation have previously been filed in one or
16 more other courts or jurisdictions and the
17 actions have been litigated and disposed of
18 unfavorably to the party filing, initiating,
19 advancing, or continuing the litigation.



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

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

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

9 (3) Force, coerce, or attempt to force or coerce the other
10 party to agree to or make adverse concessions
11 concerning financial, custodial, support, or other
12 issues when the issues in question have been
13 previously litigated and decided in favor of the other
14 party;

15 (4) Force, coerce, or attempt to force or coerce the other
16 party to alter, engage in, or refrain from engaging in
17 conduct when the conduct is lawful;

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

20 (6) Prevent, interfere, or adversely impact the ability of
21 the other party to pursue or maintain a livelihood or



1 lifestyle at the same or better standard as the other
2 party enjoyed prior to the filing of the action;

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

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

15 § -4 Procedure to request order restricting abusive

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



- 1 (1) In any answer or response to the litigation being
- 2 filed, initiated, advanced, or continued;
- 3 (2) By motion made at any time during any open or ongoing
- 4 case; or
- 5 (3) By separate motion made under this chapter, within
- 6 five years of the entry of a temporary restraining
- 7 order or order for protection even if the order has
- 8 since expired.

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

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

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

18 § -5 Hearing; procedure. (a) If a party asserts that
19 they are being subjected to abusive litigation, the court shall
20 attempt to verify that the parties have or previously had an
21 intimate partner relationship and that the party raising the



1 claim of abusive litigation has been found to be a victim of
2 domestic violence by the other party. If the court verifies
3 that both elements are true or is unable to verify that they are
4 not true, the court shall set a hearing to determine whether the
5 litigation meets the definition of abusive litigation.

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

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

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



- 1 (2) Allegations and other factual contentions are made
2 without adequate evidentiary support or are unlikely
3 to have evidentiary support after a reasonable
4 opportunity for further investigation;
- 5 (3) An issue or issues that are the basis of the
6 litigation have previously been filed in one or more
7 other courts or jurisdictions and the actions have
8 been litigated and disposed of unfavorably to the
9 party filing, initiating, advancing, or continuing the
10 litigation;
- 11 (4) Within the last ten years, the party allegedly
12 engaging in abusive litigation has been sanctioned by
13 a court of law for filing one or more cases,
14 petitions, motions, or other filings, that were found
15 to have been frivolous, vexatious, intransigent, or
16 brought in bad faith involving the same opposing
17 party; or
- 18 (5) A court of record in another judicial circuit or
19 jurisdiction has determined that the party allegedly
20 engaging in abusive litigation has previously engaged
21 in abusive litigation or similar conduct and has been



1 subject to a court order imposing prefiling
2 restrictions.

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

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

13 (1) Impose all costs of any abusive litigation action
14 pending in the court at the time of the court's
15 finding pursuant to subsection (a) against the party
16 advancing the abusive litigation;

17 (2) Award the other party reasonable attorneys' fees and
18 costs of responding to the abusive litigation action
19 including the cost of seeking the order restricting
20 abusive litigation; and



1 (3) Identify the party protected by the order restricting
2 abusive litigation and impose prefiling restrictions
3 upon the party found to have engaged in abusive
4 litigation for a period of not more than seventy-two
5 months. The time period may be extended beyond the
6 maximum if the party found to have engaged in abusive
7 litigation, since the effective date of the order, has
8 engaged in further abusive litigation or caused
9 further abuse including coercive control, domestic
10 abuse, extreme psychological abuse, or malicious
11 property damage. For the purposes of this paragraph,
12 "coercive control", "domestic abuse", "extreme
13 psychological abuse", and "malicious property damage"
14 have the same meaning as in section 586-1.

15 (c) If the court finds by a preponderance of the evidence
16 that the litigation does not constitute abusive litigation, the
17 court shall enter written findings and the litigation shall
18 proceed. Nothing in this chapter shall be construed as limiting
19 the court's inherent authority to control the proceedings and
20 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 file an application or motion before the court that imposed the
10 order restricting abusive litigation to make a request to file.
11 The court may examine witnesses, court records, and any other
12 available evidence to determine if the proposed litigation is
13 abusive litigation or if there are reasonable and legitimate
14 grounds upon which the litigation is based.

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



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

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

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



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

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

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



1 refer the case back to the court who granted the request to file
2 for further disposition.

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

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

18 (j) 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 pleading, the protected party is



1 under no obligation or duty to respond to the summons,
2 complaint, petition, or motion; answer interrogatories; appear
3 for depositions; or take any other responsive action required by
4 rule or statute in a civil action.

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

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

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



1 SECTION 5. 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 6. This Act shall take effect upon its approval.



Report Title:

Domestic Violence; Judicial Procedures; Abusive Litigation

Description:

Establishes judicial procedures to prevent and remedy abusive litigation. (SD1)

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

