



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, February 1, 2024 at 9:00 a.m.
State Capitol, Conference Room 016 & Videoconference

by:
Dyan M. Medeiros
Judge, District Family Court
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2685 – Relating to Abusive Litigation.

Purpose: Establishes judicial procedures to prevent and remedy abusive litigation.

Judiciary's Position:

The Judiciary takes no position on SB 2685 and offers the following recommendations based on the family courts' extensive experience with domestic violence and its effects on the parties and their children.

Recommendation #1 (page 3 from line 7):

§ -2 Definitions. As used in this chapter:

"Intimate partner" means:

- (1) Current or former spouses or reciprocal beneficiaries;
- (2) Persons who have a child in common regardless of whether they have been married or have lived together at any time [~~unless the child was conceived through sexual assault~~]; or
- (3) Persons who have or have had a dating relationship



~~[where both persons are at least thirteen years of age or older.];~~

(4) The term “intimate” has no romantic connotations.

Reasons: Sexual assault is an unfortunate occurrence domestic violence and it is not limited to strangers. Carving out an exception based on sexual assault is not necessary and will have the unintended consequence of excluding persons who would otherwise “fit” the population this bill seeks to protect. Similarly, limiting dating relationships to those thirteen years or older is not necessary and will exclude persons who would otherwise “fit” the population this bill seeks to protect. The new sub-section (4) makes it clear that abuse is not limited to those with romantic relationships.

Recommendation #2 (page 3, lines 17-18):

"Litigation" ~~[has the same meaning as defined in section 634J-1.]~~ means any civil action or proceeding, commenced, maintained, or pending in any state or federal court of record.

Reason: The suggested language is taken from section 634J-1. It is clearer to include the language and there does not appear to be any reason to refer to 634J, even though it is a statute with similar purposes (“Vexatious Litigants”).

Recommendation #3 (page 4, from line 1):

§ -3 Abusive litigation; defined.

(a) Abusive litigation occurs where the following apply:

(1) The opposing parties have a current or former intimate partner relationship or have filed on behalf of a minor or incapacitated person who has a current or former intimate partner relationship;

Reason: A significant number of cases are filed on behalf of minors and incapacitated persons including allegations of dating abuse and elder abuse.

Recommendation #4 (page 4, from line 5):

(2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed domestic violence against the other party including by a temporary restraining order or order for protection that the court found was necessary due to domestic violence or ~~[has]~~ the parties had agreed to an order for protection in a case of domestic abuse;

Reason: We believe this change corrects a typographical error.



Recommendation #5 (page 5, from line 10):

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

(1) Exhaust, deplete, impair, or adversely impact the other party's financial resources [~~unless punitive damages are requested and appropriate or a change in the circumstances of the parties provides a good faith basis to seek a change to a financial award, support, or distribution of resources~~];

Reason: The deleted phrase may be confusing and it is not necessary. The factual allegations would be incorporated in the petition or motion.

Recommendation #6 (page 5, from line 19, to page 6, line 3):

(2) Prevent or interfere with the ability of the other party to raise a child or children for whom the other party has sole or joint legal custody [~~in the manner the other party deems appropriate unless the party filing the litigation has a lawful right to interfere and a good faith basis for doing so~~];

Reasons: The deleted language “in the manner the other party deems appropriate” is redundant and not necessary. There’s no need to require proof of what the other party deems “appropriate.” The crux of problem in the prevention or interference with parenting. Similarly, the phrase “unless the party filing the litigation has a lawful right to interfere” is unnecessary. If a party has no standing or no legal connection with the child, the problem is much more fundamental than being “abusive.” The phrase “a good faith basis for doing so” is a determination to be made by the court as a basic finding throughout this bill.

Recommendation #7 (page 6, from line 10):

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

Reason: The deleted language is redundant and not necessary.

Recommendation #8 (page 6, from line 16):



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

Reason: The deleted language is redundant and not necessary.

Recommendation #9 (page 7, from line 8):

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

Reason: The added language recognizes that there are many ways to cause reputational damage (e.g., dissemination of AI generated false compromising images).

Recommendation #10 (page 9, from line 9):

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

(1) ~~[The same or substantially similar issues between the same or substantially similar parties were litigated within the past five years in the same court or any other court of competent jurisdiction;]~~
Proffered legal claims are not based on existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

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



Allegations and other factual contentions are made without adequate evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for further investigation;

(3) An issue or issues that are the basis of the litigation have previously been filed in one or more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation;

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

~~(4)~~ 5) A court of record in another judicial ~~[district]~~ circuit or jurisdiction has determined that the party allegedly engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions.

Reasons: The new language recommended for sub-sections (1), (2), and (3), are found in SB 2604, page 11, from line 16. We suggest this language because it more clearly delineates unsubstantiated legal issues, unsubstantiated factual allegations, and previous litigations. The change recommended in the new sub-section (5) makes a clearer distinction between the various judicial circuits of this state (we do not have judicial “districts”) and other jurisdictions.

Recommendation #11 (page 11, from line 11):

(3) Identify the party protected by the order restricting abusive litigation and impose prefiling restrictions upon the party found to have engaged in abusive litigation for a period of ~~[not less than forty-eight months and]~~ not more than seventy-two months. The time period can be extended beyond the maximum if the party found to have engaged in abusive litigation, since the effective date of the order, has engaged in further abusive litigation and/or caused further abuse as defined by H.R.S. 586-1, including,



"Coercive control", "Domestic abuse", "Extreme psychological abuse", and "Malicious property damage."

Reasons: While statutes cannot allow court orders of unlimited time periods, setting a minimum time period does not appear to be necessary. Therefore, the protected party should be able to ask for an order under 4 years of duration and a court should be able to make such an order if warranted by its findings. A maximum time period of 6 years is reasonable but the protected party should be able to seek an extension in the event that the original order has not deterred continuing abuses.

Recommendation #12 (page 12, from line 4):

§ -8 Filing of new case or motion by person subject to an order restricting abusive litigation.

(a) A person subject to an order restricting abusive litigation who wishes to initiate a new case or file a motion in an existing case during the time the person is under filing restrictions shall first file an application or motion ~~appear~~ before the court that imposed the order restricting abusive litigation to make a request to file. The court may examine witnesses, court records, and any other available evidence to determine if the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based.

Reason: The added language simply clarifies that a filing is needed rather than an appearance.

Recommendation #13 (page 12, lines 15 to 19):

(b) Based on reviewing the records as well as any evidence submitted as sworn statements from the person who is subject to the order restricting abusive litigation, if the court determines the proposed litigation is abusive litigation, then it is not necessary for the person protected by the order to appear or participate in any way.

Reason: The added language provides specific parameters for the type of “evidence” that should be presented to the court at this stage of proceedings.

Recommendation #14 (page 16, lines 7 to 9):



Senate Bill No. 2685, Relating to Abusive Litigation
Committee on Judiciary
Thursday, February 1, 2024 at 9:00 a.m.
Page 7

SECTION 3. By ~~September 1, 2024~~, January 1, 2025, the courts shall create new forms for the motion for order restricting abusive litigation and develop relevant instructions.

Reason: Based on our experience, developing appropriate forms and clear and specific instructions for the motion may take more time than the bill currently allows.

Finally, in order to accommodate the filings and the hearings provided for in this bill, the Judiciary must make certain operational changes. These may include changes to the Judiciary Electronic Filing and Service System (JEFS) and Judiciary Information Management System (JIMS). To allow us sufficient time to address these operational issues, we respectfully request that this Act take effect on January 1, 2025.

Thank you for the opportunity to testify on this matter.



February 1, 2024

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Brandon J.C. Elefante
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: SB2685 Regarding Abusive Litigation

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 27 member programs statewide, I respectfully submit testimony in support of SB2685 and recommend the following amendments intended to make this bill accessible to survivors of all forms of intimate partner violence, including domestic violence, sexual assault, and stalking.

SB2685 allows a domestic survivor to assert a claim of abusive litigation if the party filing or advancing the litigation was previously an intimate partner. Survivors of domestic violence, sexual assault, and stalking seek relief through civil and family courts in Hawai'i and other jurisdictions that should be recognized in abusive litigation. We recommend amending expanding the definition in § -3(2) to allow for those instances as follows:

(2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed ~~domestic violence~~ intimate partner violence against the other party including by a temporary restraining order or order for protection that the court found was necessary due to domestic violence, or has agreed to an order for in a case of domestic violence; pursuant to:

(A) A criminal conviction or a plea of no contendere, in this State or any other jurisdiction for any of the crimes identified in section 709—906, section 711-1106.4, or section 711—1106.5; or a filing for any offense related to domestic violence offense;



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

(C) A temporary restraining order issued pursuant to section 586—4;

(D) An order for protection issued pursuant to section 586—3;

(E) A protective order issued pursuant to section 586—5.5;

(F) A no contact order pursuant to section 709- 906(4);

(G) A foreign protective order credited pursuant to section 586—21;

(H) An order or decree issued pursuant to section 571—46 or section 580—74; or

(I) A signed affidavit from a domestic violence or sexual assault agency that assists victims of domestic violence and sexual assault.

By replacing domestic violence with intimate partner violence above, we can include survivors of sexual assault and stalking.

We also recommend amending “dating relationship” within the definition of intimate partner in § -3(2) to conform with the statutory definition in section 568-1 as follows:

(3) Persons who have or had a dating relationship as defined in section 586-1 where both persons are at least thirteen years of age or older.

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive



litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

Currently, five states have enacted legislation to address abusive litigation: Washington, Rhode Island, Vermont, Tennessee, and California. This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party. As proposed, this statute would not affect a person's right to access the courts. Instead, it would allow the courts additional discretion to terminate, mitigate, and address abusive litigation practices

This legislation would provide a critical new protective tool for survivor safety, empowerment, financial independence, economic justice, and peace after surviving domestic or sexual violence.

Thank you for the opportunity to testify on this important matter.

Sincerely,
Angelina Mercado, Executive Director



Subject: Testimony in Support of SB 2685 Abusive Litigation

I respectfully submit my testimony in **strong support SB 2685** recognizing its vital role in curbing abusive litigation. As a survivor and Advocacy Manager at DVAC, I've witnessed the devastating impact abusive litigation has on individuals and families.

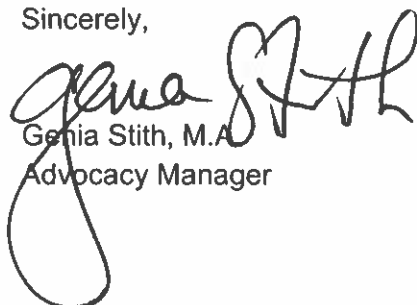
Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm on survivors. SB 2685 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

At DVAC, I have worked closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. I have seen survivors deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. I have seen the stress of court proceedings lead to job losses, as survivors struggle to balance the demands of the legal system with their employment responsibilities. I have witnessed survivors fall victim to debilitating depression and even suicide because of this issue. Abusive litigation is a sinister form of post-separation abuse employed to exert control over victims through the court system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles. Your support for SB 2685 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

SB 2685 is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support SB 2685 for a legal environment that prioritizes survivors' health and safety and insures the fair administration of justice. Thank you for your time and consideration.

Sincerely,



Genia Stith, M.A.
Advocacy Manager

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
LEGAL HELPLINE (808) 531-3771
TOLL-FREE NEIGHBOR ISLAND HELPLINE (800) 690-6200
WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG
EMAIL: DVAC@STOPTHEVIOLENCE.ORG



SB-2685

Submitted on: 1/30/2024 3:44:04 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Monique R. Ibarra	Testifying for Domestic Violence Action Center	Support	Written Testimony Only

Comments:

Subject: Testimony in Support of

SB 2685 Abusive Litigation

I respectfully submit my testimony in **strong support SB 2685**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm for survivors. SB 2685 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

As the Chief Executive Officer for the Domestic Violence Action Center, (DVAC), I have verified data that the staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff have stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles.

Your support for SB2685 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

HB 2685 regarding Abusive Litigation is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation.

Please support SB 2685 for a legal environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.

Sincerely,

Monique R. Ibarra

Chief Executive Officer

SB-2685

Submitted on: 1/30/2024 3:58:49 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kyle Shelly	Testifying for Domestic Violence Action Center	Support	Written Testimony Only

Comments:

I respectfully submit my testimony in **strong support SB 2685**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm for survivors. SB 2685 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

As a member of the Board of Directors the Domestic Violence Action Center, (DVAC), I have verified data that the staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff have stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles. Your support for SB2685 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

HB 2685 regarding Abusive Litigation is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support SB 2685 for a legal environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.

SB-2685

Submitted on: 1/30/2024 4:21:10 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

SB-2685

Submitted on: 1/30/2024 4:55:46 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Luanna Peterson	Testifying for HSCADV	Support	Written Testimony Only

Comments:

HB1965 JHA Abusive Litigation

I respectfully submit testimony in strong support of SB2685

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and in close proximity with their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

HB1965 allows a domestic or sexual violence survivor or stalking victim may assert a claim of abusive litigation if the party filing or advancing the litigation was previously an intimate partner or family or household member and has been found to have committed domestic violence, stalking, or sexual assault against the same victim/defendant in current litigation. At the same time, the court must find that the filing party's claims, allegations, and other legal contentions are not warranted under the law, or that the factual contentions are not supported by evidence, or that the issue presented was previously filed and disposed of unfavorably to the party advancing the claim.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of abusive litigation. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the

court would enter an “order restricting abusive litigation,” which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party.

Currently, five states have enacted legislation to address abusive litigation: Washington, Rhode Island, Vermont, Tennessee, and California. As proposed, this statute would not affect a person’s right to access the courts. Instead, it would allow the courts additional discretion to terminate, mitigate, and address abusive litigation practices.

This legislation would provide a critical new protective tool for survivor safety, empowerment, financial independence, economic justice, and peace after surviving domestic or sexual violence.

Thank you for your consideration,

Luanna Peterson



Subject: Testimony in Support of SB2685 Abusive Litigation

I respectfully submit my testimony in **strong support of SB2685**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm to survivors. SB2685 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes fairly and efficiently. This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles.

As a member of the Board of Directors of the Domestic Violence Action Center (DVAC), I am aware that the DVAC staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff has stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

Your support for SB2685 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hinders the misuse and weaponization of legal proceedings for harassment, intimidation, or coercion of victims and survivors.

SB2685 regarding Abusive Litigation is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support SB2685 for a legal environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.

Sincerely,

Shawn L.M. Benton
Pronouns: She/Her/Hers
Board Member
Board of Directors of the Domestic Violence Action Center





Hawaii Women's Coalition

February 1, 2024

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Brandon J.C. Elefante
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: SB2685 Regarding Abusive Litigation

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary

The Hawai'i Women's Coalition is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. Members currently include 29 organizations and agencies (private, public, membership) as well as individuals. The coalition encourages the inclusion of interested parties and in achieving equitable representation.

We support this SB2685 and the recommended amendments proposed by the Hawai'i State Coalition Against Domestic Violence.

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

Currently, five states have enacted legislation to address abusive litigation: Washington, Rhode Island, Vermont, Tennessee, and California. This bill will empower judges and the courts



Hawaii Women's Coalition

with the discretion to enter an order restricting abusive litigation which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party. As proposed, this statute would not affect a person's right to access the courts. Instead, it would allow the courts additional discretion to terminate, mitigate, and address abusive litigation practices

This legislation would provide a critical new protective tool for survivor safety, empowerment, financial independence, economic justice, and peace after surviving domestic or sexual violence.

Thank you for the opportunity to testify on this important matter.

Sincerely,
Hawai'i Women's Coalition

SB-2685

Submitted on: 1/31/2024 2:52:16 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ann S Freed	Testifying for Women’s Caucus Democratic Party of Hawai`i	Support	Written Testimony Only

Comments:

Aloha, Chair Senator Karl Rhoads, Vice Chair Senator Mike Gabbard, and members,

It is a sad state of affairs that this bill is necessary but it is, because perpetrators of domestic violence have learned how to weaponize the justice system to further traumatize and impoverish their victims.

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and in close proximity with their former abuser. This occurs often in child custody cases when former partners have children together.

As the language of the bill states, HB1965 allows a domestic or sexual violence survivor or stalking victim to assert a claim of abusive litigation if the party filing or advancing the litigation was previously an intimate partner or family or household member and has been found to have committed domestic violence, stalking, or sexual assault against the same victim/defendant in current litigation. At the same time, the court must find that the filing party’s claims, allegations, and other legal contentions are not warranted under the law, or that the factual contentions are not supported by evidence, or that the issue presented was previously filed and disposed of unfavorably to the party advancing the claim.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion.

Currently, five states have enacted legislation to address abusive litigation: Washington, Rhode Island, Vermont, Tennessee, and California. If this bill becomes law, It will allow the courts additional discretion to terminate, mitigate, and address abusive litigation practices.

The law would provide a critical new protective tool for survivor safety, empowerment, financial independence, economic justice, and peace after surviving domestic or sexual violence.

Mahalo for the opportunity to testify,

Ann S. Freed,

for,

Democratic Party of Hawai'i Women's Caucus

SB-2685

Submitted on: 1/31/2024 3:39:48 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Pugay	Individual	Support	Written Testimony Only

Comments:

I respectfully submit my testimony in **strong support SB 2685**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm for survivors. SB 2685 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

As a member of the Board of Directors the Domestic Violence Action Center, (DVAC), I have verified data that the staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff have stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles. Your support for SB2685 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

HB 2685 regarding Abusive Litigation is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support SB 2685 for a legal

environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.

SB-2685

Submitted on: 1/31/2024 4:36:25 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Shana Wailana Kukila	Individual	Support	Written Testimony Only

Comments:

My testimony is in support of SB2685, with the amendments made by the Hawaii State Coalition Against Domestic Violence. My hope is that our State's judiciary (all judges, court-appointed attorneys, guardian ad-litem, court staff) actually adheres to this kind of law along with the array of previous laws specifically meant to protect victims and survivors of intimate partner violence and our children. Although many laws like this are currently on the books, they are not always followed in the courts and victims are re-victimized all over again by judges and court officials who do not follow the law and in turn, further endanger victim seeking justice in the courts.

Mahalo nui to the Women's Legislative Caucus, the HSCADV and the legislature for considering this bill and for recognizing the real and present danger posed by the weaponization of the legal system against domestic violence and intimate partner violence victims.

SB-2685

Submitted on: 1/31/2024 6:11:36 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Suzanne Young	Individual	Support	Written Testimony Only

Comments:

Subject: Testimony in Support of SB 2685 Abusive Litigation

I respectfully submit my testimony in **strong support SB 2685**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm for survivors. SB 2685 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

As a member of the Board of Directors the Domestic Violence Action Center, (DVAC), I have verified data that the staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff have stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles. Your support for SB2685 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

SB 2685 regarding Abusive Litigation is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support SB 2685 for a legal environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.