

## ACT 252

H.B. NO. 2657

A Bill for an Act Relating to Abusive Litigation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that abusive litigation in the intimate partner violence context is a unique issue that needs to be addressed. Individuals who abuse their intimate partners may also take advantage of court proceedings to control, harass, intimidate, coerce, and impoverish the abused partner, even after a relationship has ended. Abusive litigation arises in a variety of contexts, often in family law cases, and it is not uncommon for abusers to file civil lawsuits against survivors. Even if a lawsuit is meritless, forcing a survivor to spend time, money, and emotional resources responding to the action provides a means for the abuser to assert power and control over the survivor.

The legislature further finds that the term “abusive litigation” is the most common term for this issue. Two states, Tennessee and Washington, have already enacted laws to prevent and remedy abusive litigation.

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

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

**“CHAPTER  
ABUSIVE LITIGATION**

**§ -1 Purpose and intent.** The legislature finds and declares that court proceedings can provide a means for domestic violence abusers to control, harass, intimidate, coerce, and impoverish their intimate partner during the relationship and after it has ended. Misused in this way, the legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial harm. Abusive litigation arises in a variety of contexts such as marriage dissolutions, legal separations, parenting plan actions or modifications, and protection order proceedings, and it is not uncommon for abusers to file civil lawsuits against survivors for defamation, tort, or breach of contract. Even if a lawsuit is meritless, forcing the partner to spend time, money, and emotional resources responding to the action provides a means for the abuser to assert power and control. The purpose of this chapter is to provide the courts with a process to curb abusive litigation and to mitigate the harms abusive litigation perpetuates. It is the legislature’s intent that this chapter be liberally construed to effectuate the goal of protecting survivors of domestic violence from abusive litigation.

**§ -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; or
- (3) Persons who have or have had a dating relationship as that term is defined in section 586-1.

For the purposes of this definition, “intimate” has no romantic connotations.

“Litigation” means any civil action or proceeding commenced, maintained, or pending in any state or federal court of record.

**§ -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;
- (2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed 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 the parties had agreed to an order for protection in a case of domestic violence and to the facts of that order, pursuant to:
  - (A) An order or decree issued pursuant to section 571-46 or 580-74;
  - (B) An order for protection issued pursuant to section 586-3;
  - (C) A temporary restraining order issued pursuant to section 586-4;
  - (D) A protective order issued pursuant to section 586-5.5;
  - (E) A foreign protective order credited pursuant to section 586-21;
  - (F) A no contact order issued pursuant to section 709-906(4); or
  - (G) A criminal conviction or a plea of no contest, in this State or any other jurisdiction for any of the crimes identified in section 709-906, 711-1106.4, or 711-1106.5; or a filing for any offense related to domestic violence;

- (3) The litigation is being filed, initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party; and
- (4) At least one of the following factors apply:
  - (A) Claims, allegations, and other legal contentions made in the litigation are not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;
  - (B) Allegations and other factual contentions made in the litigation are without the existence of evidentiary support; or
  - (C) 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.
- (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;
  - (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;
  - (3) Force, coerce, or attempt to force or coerce the other party to agree to or make adverse concessions concerning financial, custodial, support, or other issues when the issues in question have been previously litigated and decided in favor of the other party;
  - (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;
  - (5) Impair, or attempt to impair, the health or well-being of the other party or the other party's dependent;
  - (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 before the filing of the action;
  - (7) Force, coerce, or attempt to force or coerce the other party to maintain contact with the party who is filing, initiating, advancing, or continuing the litigation; or
  - (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.

**§ -4 Procedure to request order restricting abusive litigation.** (a) A party to a case may request from the court an order restricting abusive litigation if the parties are current or former intimate partners and one party has been found by the court to have committed domestic violence against the other party:

- (1) In any answer or response to the litigation being filed, initiated, advanced, or continued;
- (2) By motion made at any time during any open or ongoing case; or
- (3) By separate motion made under this chapter; provided that for a temporary restraining order or order for protection, the motion

shall be made within five years of the entry of the temporary restraining order or order for protection even if the order has since expired.

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

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

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

**§ -5 Hearing; procedure.** (a) If a party asserts that they are being subjected to abusive litigation, the court shall attempt to verify that the parties have or previously had an intimate partner relationship and that the party raising the claim of abusive litigation has been found to be a victim of domestic violence by the other party. If the court verifies that both elements are true or is unable to verify that they are not true, the court shall set a hearing to determine whether the litigation meets the definition of abusive litigation.

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

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

- (1) 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) 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;
- (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
- (5) A court of record in another judicial 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.

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

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

- (1) Impose all costs of any abusive litigation action pending in the court at the time of the court's finding pursuant to subsection (a) against the party advancing the abusive litigation;
- (2) Award the other party reasonable attorneys' fees and costs for responding to the abusive litigation action, including the cost of seeking the order restricting abusive litigation; and
- (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 no more than seventy-two months; provided that the prefiling restrictions may be extended if the party found to have engaged in abusive litigation, since the effective date of the order, has engaged in further abusive litigation or caused further abuse, including "coercive control", "domestic abuse", "extreme psychological abuse", and "malicious property damage" as those terms are defined in section 586-1.

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

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

**§ -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 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.

(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. If the court is unable to determine whether the proposed litigation is abusive litigation without hearing from the person protected by the order, then the court shall issue an order scheduling a hearing and notifying the protected party of the party's right to appear and participate in the hearing. The court order shall specify whether the protected party is expected to submit a written response. The court shall allow the protected party to attend the hearing remotely at the protected party's request.

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

(d) If the court reasonably believes that the requested filing by the party who is subject to the order restricting abusive litigation will not be abusive litigation,

tion, the court may grant the request and issue an order permitting the filing of the case, motion, or pleading. The court order shall be attached to the front of the pleading to be filed with the clerk. The party who is protected by the order restricting abusive litigation shall be served with a copy of the court order at the same time as the underlying pleading.

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

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

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

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

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

(j) If a party who is protected by an order restricting abusive litigation is served with a pleading filed by the person who is subject to the order, and the pleading does not have an attached order allowing the pleading, the protected party is under no obligation or duty to respond to the summons, complaint, petition, or motion; answer interrogatories; appear for depositions; or take any other responsive action required by statute or rule in a civil action.

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

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

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

**SECTION 4.** If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other

provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 6. This Act shall take effect on January 1, 2025.

(Approved July 9, 2024.)