

2023 -- H 5883 SUBSTITUTE A

LC002110/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- ABUSIVE LITIGATION

Introduced By: Representatives Kazarian, Donovan, Casimiro, Felix, Diaz, Spears,
Caldwell, Craven, McEntee, and Dawson

Date Introduced: March 01, 2023

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The general assembly makes the following findings of fact:

2 (1) The legislature recognizes that individuals who abuse their intimate partners often
3 misuse court proceedings in order to control, harass, intimidate, coerce, and/or impoverish the
4 abused partner. Court proceedings can provide a means for an abuser to exert and reestablish power
5 and control over a domestic violence survivor long after a relationship has ended. The legal system
6 unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and
7 financial devastation. This misuse of the court system by abusers has been referred to as legal
8 bullying, stalking through the courts, paper abuse, and similar terms.

9 (2) The legislature finds that the term "abusive litigation" is the most common term and
10 that it accurately describes this problem. Abusive litigation against domestic violence survivors
11 arises in a variety of contexts. Family law cases such as dissolutions, legal separations, parenting
12 plan actions or modifications, and protection order proceedings are particularly common forums
13 for abusive litigation.

14 (3) It is also not uncommon for abusers to file civil lawsuits against survivors, such as
15 defamation, tort, or breach of contract claims. Even if a lawsuit is meritless, forcing a survivor to
16 spend time, money, and emotional resources responding to the action provides a means for the
17 abuser to assert power and control over the survivor.

18 (4) The legislature finds that courts have considerable authority to respond to abusive
19 litigation tactics, while upholding litigants' constitutional rights to access to the courts. Recognizing

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

5 SECTION 2. Title 8 of the General Laws entitled "COURTS AND CIVIL PROCEDURE
6 — COURTS" is hereby amended by adding thereto the following chapter:

7 CHAPTER 8.4

8 ABUSIVE LITIGATION

9 **8-8.4-1. Definitions.**

10 As used in this chapter, the following words shall have the following meanings:

11 (1) "Abusive litigation" means litigation where the following apply:

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

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

17 (A) A final protective order entered pursuant to §§ 8-8.1-3 or 15-5-19;

18 (B) A no contact order entered pursuant to § 12-29-4;

19 (C) A final sexual assault protective order entered pursuant to § 11-37.2-2;

20 (D) A final foreign abuse prevention order entered pursuant to § 12-29-1.1;

21 (E) A final order for alimony or custody of children, entered pursuant to § 15-5-16;

22 (F) A criminal conviction or a plea of nolo contendere, in this state or any other jurisdiction
23 for any of the crimes enumerated in § 12-29-2 or a filing for any domestic violence offense
24 enumerated in this chapter;

25 (G) A pending criminal charge, in this state or any other jurisdiction, of domestic violence,
26 wherein the court has imposed criminal conditions of release pertaining to the safety of the victim;
27 or

28 (H) A signed affidavit from a domestic violence or sexual assault advocate or counselor
29 working on behalf of an agency that assists victims of domestic violence and sexual assault; and

30 (iii) The primary purpose of the litigation is found to be the abuse, harassment,
31 intimidation, or threatening of the other party, or to maintain contact with the other party.

32 (2) "Family or household member" means current or former intimate partners, spouses,
33 former spouses, persons related by blood or marriage, persons who are presently residing together
34 or who have resided together in the past three (3) years, and persons who have a child in common,

1 regardless of whether they have been married or have lived together, or persons who are, or have
2 been, in a dating or engagement relationship within the past year.

3 (3) “Foreign abuse prevention order” means any protection order issued by the court of any
4 other state that contains provisions similar to relief provisions authorized under this chapter, or the
5 Rhode Island rules of domestic relations procedure. “Other state” and “issuing state” mean any
6 state other than Rhode Island and any federally recognized Indian tribe, territory or possession of
7 the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

8 (4) “Litigation” means any kind of legal action or proceeding, including, but not limited
9 to:

10 (i) A filing of a summons, complaint, or petition;

11 (ii) Serving a summons, complaint, or petition, regardless of whether it has been filed;

12 (iii) Filing a motion, notice of court date, or order to appear;

13 (iv) Serving a motion, notice of court date, or order to appear, regardless of whether it has
14 been filed or scheduled;

15 (v) Filing a subpoena, subpoena duces tecum, interrogatories, request for production of
16 documents, notice of deposition, or other discovery request; or

17 (vi) Serving a subpoena, subpoena duces tecum, interrogatories, request for production of
18 documents, notice of deposition, or other discovery request.

19 (5) “Perpetrator of abusive litigation” means a person who files, initiates, advances, or
20 continues litigation in violation of an order restricting abusive litigation.

21 **8-8.4-2. Order restricting abusive litigation.**

22 (a) A party may request from the court an order restricting litigation alleged to be abusive
23 if the requesting party can show:

24 (1) The opposing parties have a current or former family or household member relationship
25 or there has been a civil order or criminal conviction determining that one of the parties stalked or
26 sexually assaulted the other party; and

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

29 (i) A final protective order entered pursuant to §§ 8-8.1-3 or 15-5-19;

30 (ii) A no contact order entered pursuant to § 12-29-4;

31 (iii) A final sexual assault protective order entered pursuant to § 11-37.2-2;

32 (iv) A final foreign abuse prevention order entered pursuant to § 12-29-1.1;

33 (v) A final order for alimony or custody of children, entered pursuant to § 15-5-16;

34 (vi) A criminal conviction for any of the enumerated crimes defined in § 12-29-2 or a filing

1 for any domestic violence offense enumerated in this chapter;

2 (vii) A pending criminal charge, in this state or any other jurisdiction, of domestic violence,
3 wherein the court has imposed criminal conditions of release pertaining to the safety of the victim;
4 or

5 (viii) A signed affidavit from a domestic violence or sexual assault advocate or counselor
6 working on behalf of an agency that assists victims of domestic violence and sexual assault.

7 (b) A party who meets the requirements of subsection (a) of this section may request an
8 order restricting abusive litigation:

9 (1) In any answer or response to the litigation being filed, initiated, advanced, or continued;

10 (2) By motion made at any time during any open or ongoing case;

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

12 (4) Orally in any hearing; or

13 (5) By petition.

14 (c) In the event no formal complaint, motion, petition, or other pleading has been filed, the
15 superior court shall have jurisdiction to hear the request and issue an order restricting abusive
16 litigation.

17 (d) In the event litigation alleged to be abusive is filed in the district court, the district court
18 is authorized to hear a request for an order restricting abusive litigation.

19 (e) In the event litigation alleged to be abusive is filed in the family court, the family court
20 is authorized to hear a request for an order restricting abusive litigation.

21 (f) Upon the request of a party for an order restricting abusive litigation the court shall hold
22 a hearing to determine if a party is engaging in abusive litigation.

23 (g) The court administrator shall create forms for a petition or motion for an order
24 restricting abusive litigation and the form for an order restricting abusive litigation, and the forms
25 shall be maintained by the clerks of the courts.

26 (h) No filing fee shall be charged to the responding party for proceedings pursuant to this
27 section.

28 (i) The provisions of this section are nonexclusive and shall not affect any other available
29 remedy.

30 **8-8.4-3. Hearing – Procedure.**

31 At the hearing, evidence of any of the following shall create a rebuttable presumption that
32 litigation is being initiated, advanced, or continued primarily for the purpose of harassing,
33 intimidating, threatening, or maintaining contact with the other party:

34 (1) The same or substantially similar issues between the same or substantially similar

1 parties have been litigated within the past five (5) years in the same court or any other court of
2 competent jurisdiction;

3 (2) The same or substantially similar issues between the same or substantially similar
4 parties have been raised, pled, or alleged in the past five (5) years and were decided on the merits
5 or dismissed;

6 (3) Within the last five (5) years, the party allegedly engaging in abusive litigation has been
7 sanctioned by any court for filing one or more cases, petitions, motions, or other filings that were
8 found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same
9 opposing party;

10 (4) Any court has determined that the party allegedly engaging in abusive litigation has
11 previously engaged in abusive litigation or similar conduct, including, but not limited to, the filing
12 of a private misdemeanor prosecution complaint pursuant to §§ 12-4-1 or 12-10-12, and has been
13 subject to a court order imposing prefiling restrictions;

14 (5) Proffered legal claims are not based on existing law or by a reasonable argument for
15 the extension, modification, or reversal of existing law, or the establishment of new law;

16 (6) Allegations and other factual contentions made are without adequate evidentiary
17 support or are unlikely to have evidentiary support after a reasonable opportunity for further
18 investigation; or

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

22 **8-8.4-4. Burden of proof.**

23 (a) If the court finds by a preponderance of the evidence that a party is engaging in abusive
24 litigation and that any or all of the motions or actions pending before the court are abusive litigation,
25 the litigation may be dismissed, denied, stricken, or resolved by other disposition with prejudice.

26 (b) After providing the parties an opportunity to be heard on any order or sanctions to be
27 issued, the court may enter an order restricting abusive litigation that shall include conditions
28 deemed necessary and appropriate, including:

29 (1) Awarding the other party reasonable attorneys' fees and costs of responding to the
30 abusive litigation, including the cost of seeking the order restricting abusive litigation;

31 (2) Awarding the other party all costs of the abusive litigation, including, but not limited
32 to, court costs, lost wages and transportation costs, including trips to the courthouse to review files
33 or pleadings, and costs of childcare expended as a result of defending said litigation;

34 (3) Identifying the party protected by the order and imposing prefiling restrictions upon the

1 party found to have engaged in abusive litigation that pertains to any future litigation against the
2 protected party or the protected party's dependents; and

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

4 (c) If the court finds that the litigation does not constitute abusive litigation, the court shall
5 enter written findings and the litigation shall proceed.

6 (d) Nothing in this section shall be construed as limiting the court's inherent authority to
7 control the proceedings and litigants before it.

8 **8-8.4-5. Filing of a new case by a person subject to an order restricting abusive**
9 **litigation.**

10 (a) Except as otherwise provided in this section, a person who is subject to an order
11 restricting abusive litigation is prohibited from filing, initiating, advancing, or continuing the
12 litigation against the protected party for the period of time that the filing restrictions are in effect.

13 (b) A person who is subject to an order restricting litigation against whom prefiling
14 restrictions have been imposed pursuant to § 8-8.4-4 who wishes to initiate a new case against the
15 protected party or file a motion in an existing case against the protected party during the time the
16 person is under filing restrictions shall make an application to the court. Upon the filing of an
17 application, the court shall issue an order scheduling a hearing to determine whether the proposed
18 litigation or motion is abusive litigation or if there are reasonable and legitimate grounds upon
19 which the proposed litigation or motion is based.

20 The scheduling order shall notify the protected party of the party's right to appear or
21 participate in the hearing. The order shall specify that should the protected party choose not to
22 appear or participate in the hearing, the protected party is expected to submit a written response.
23 When possible, the protected party shall be permitted to appear remotely.

24 (c) Following the hearing, if the court determines that the proposed litigation or motion
25 that the party who is subject to the prefiling order is making application to file will constitute
26 abusive litigation, the application shall be denied, dismissed, or otherwise disposed of with
27 prejudice.

28 (d) If the court determines that the proposed litigation or motion is not abusive litigation,
29 the court shall grant the application and issue an order permitting the filing of the proposed litigation
30 or motion. The order shall be attached to the front of the pleading to be filed with the clerk. The
31 party who is protected by the order shall be served with a copy of the order at the same time as the
32 underlying pleading.

33 (e) The court shall make findings and issue a written order supporting the ruling.

34 (f) If the application for the filing of a pleading is granted pursuant to this section, the

1 period of time commencing with the filing of the application requesting permission to file the action
2 and ending with the issuance of an order permitting filing of the action shall not be computed as a
3 part of any applicable period of limitations within which the matter must be instituted.

4 (g) If a party who is protected by an order restricting abusive litigation is served with a
5 pleading filed by the person who is subject to the order, and the pleading does not have an attached
6 order allowing the pleading, the protected party may respond to the case by filing a copy of the
7 order restricting abusive litigation and is under no obligation or duty to respond to the summons,
8 complaint, petition, or motion, or to answer interrogatories or any other discovery request, or to
9 appear for depositions or any other responsive action required by rule or statute in a civil action.

10 (h) If it is brought to the attention of the court that a person against whom prefiling
11 restrictions have been imposed has filed a new case or is continuing an existing case without having
12 been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose
13 of the matter. The court may take whatever action against the perpetrator of abusive litigation
14 deemed necessary and appropriate for a violation of the order restricting abusive litigation.

15 **8-8.4-6. Construction.**

16 This chapter shall be construed liberally in order to effectuate the goal of protecting
17 survivors of domestic violence and other abuse from abusive litigation.

18 SECTION 3. Chapter 8-8 of the General Laws entitled "DISTRICT COURT" is hereby
19 amended by adding thereto the following section:

20 **8-8-3.4. Equitable powers in abusive litigation matters.**

21 In addition to the powers heretofore exercised, the district court is hereby empowered in
22 furtherance of jurisdiction under chapter 8.4 of title 8 to grant such orders, including setting
23 prefiling restrictions on persons found to be abusive litigants, as justice and equity may require.

24 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- ABUSIVE LITIGATION

1 This act would prohibit abusive litigation in the context of domestic violence, sexual
2 assault or stalking and allow any court to dismiss a case or complaint upon a finding, based on a
3 preponderance of the evidence, that the person who filed the case or complaint is doing so as a
4 means to have further contact or abuse the person against whom the complaint was filed. The act
5 would also allow any court to impose sanctions against the party found to be using abusive
6 litigation, including monetary amounts incurred in the defense of such litigation.

7 This act would take effect upon passage.

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