

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 45
3 entitled “An act relating to abusive litigation filed against survivors of
4 domestic abuse, stalking, or sexual assault” respectfully reports that it has
5 considered the same and recommends that the Senate propose to the House that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

8 Sec. 1. 15 V.S.A. chapter 21, subchapter 5 is added to read:

9 Subchapter 5. Abusive Litigation

10 § 1181. DEFINITIONS

11 As used in this subchapter:

12 (1) “Abusive litigation” means litigation where the criteria set forth
13 below in each of subdivisions (A)–(D) are found to have been established:

14 (A) The opposing parties have a current or former family or
15 household member relationship or there has been a civil order or criminal
16 conviction determining that one of the parties stalked or sexually assaulted the
17 other party.

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

1 (i) a final order issued pursuant to subchapter 1 of this chapter
2 (abuse prevention orders);

3 (ii) a final order issued pursuant to 12 V.S.A. chapter 178 (orders
4 against stalking or sexual assault);

5 (iii) a final foreign abuse prevention order;

6 (iv) an order under section 665a of this title (conditions of parent-
7 child contact in cases involving domestic violence);

8 (v) a conviction for domestic assault pursuant to 13 V.S.A. chapter
9 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or
10 sexual assault pursuant to 13 V.S.A. chapter 72; or

11 (vi) a court determination of probable cause for a charge of
12 domestic assault and the court imposed criminal conditions of release
13 pertaining to the safety of the victim, which include distance restrictions or
14 restrictions on contact with the victim.

15 (C) The litigation is being initiated, advanced, or continued primarily
16 for the purpose of abusing, harassing, intimidating, threatening, or maintaining
17 contact with the other party.

18 (D) At least one of the following applies:

19 (i) the claims, allegations, or other legal contentions made in the
20 litigation are not warranted by existing law or by a reasonable argument for the

1 extension, modification, or reversal of existing law, or the establishment of
2 new law; or

3 (ii) the allegations and other factual contentions made in the
4 litigation are without adequate evidentiary support or are unlikely to have
5 evidentiary support after a reasonable opportunity for further investigation; or

6 (iii) an issue or issues that are the basis of the litigation have
7 previously been filed in one or more other courts or jurisdictions and the
8 actions have been litigated and disposed of unfavorably to the party filing,
9 initiating, advancing, or continuing the litigation.

10 (2) “Foreign abuse prevention order” means any protection order issued
11 by the court of any other state that contains provisions similar to relief
12 provisions authorized under this chapter, the Vermont Rules for Family
13 Proceedings, or 12 V.S.A. chapter 178. “Other state” and “issuing state” mean
14 any state other than Vermont and any federally recognized Indian tribe,
15 territory or possession of the United States, the Commonwealth of Puerto Rico,
16 or the District of Columbia.

17 (3) “Litigation” means any kind of legal action or proceeding, including:

18 (A) filing a summons, complaint, or petition;

19 (B) serving a summons, complaint, or petition, regardless of whether
20 it has been filed;

21 (C) filing a motion, notice of court date, or order to appear;

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

3 (E) filing a subpoena, subpoena duces tecum, request for
4 interrogatories, request for production, notice of deposition, or other discovery
5 request; or

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

9 (4) “Perpetrator of abusive litigation” means a person who files,
10 initiates, advances, or continues litigation in violation of an order restricting
11 abusive litigation.

12 § 1182. ORDER RESTRICTING ABUSIVE LITIGATION

13 (a) A party who meets the requirements of subdivision 1181(1) of this title
14 may request an order restricting abusive litigation:

15 (1) in any answer or response to the litigation being filed, initiated,
16 advanced, or continued;

17 (2) by motion made at any time during any open or ongoing case;

18 (3) in an answer or response to any motion or request for an order; or

19 (4) orally in any hearing.

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

4 (c) Proceedings pursuant to this subchapter may be initiated by petition
5 instituting a new case or by motion in a pending case.

6 (d) The Court Administrator shall create forms for a petition or motion for
7 an order restricting abusive litigation and an order restricting abusive litigation,
8 and the forms shall be maintained by the clerks of the courts.

9 (e) No filing fee shall be charged to the unrestricted party for proceedings
10 pursuant to this subchapter, regardless of whether it is filed pursuant to this
11 subchapter.

12 (f) The provisions of this subchapter are nonexclusive and shall not affect
13 any other remedy available.

14 § 1183. HEARING; PROCEDURE

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

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

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

4 (3) Within the last 10 years, the party allegedly engaging in abusive
5 litigation has been sanctioned by any court for filing one or more cases,
6 petitions, motions, or other filings that were found to have been frivolous,
7 vexatious, intransigent, or brought in bad faith involving the same opposing
8 party.

9 (4) Any court has determined that the party allegedly engaging in
10 abusive litigation has previously engaged in abusive litigation or similar
11 conduct and has been subject to a court order imposing prefiling restrictions.

12 § 1184. BURDEN OF PROOF

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

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

1 (1) awarding the other party reasonable attorney’s fees and costs of
2 responding to the abusive litigation, including the cost of seeking the order
3 restricting abusive litigation; and

4 (2) identifying the party protected by the order and imposing prefiling
5 restrictions upon the party found to have engaged in abusive litigation that
6 pertains to any future litigation against the protected party or the protected
7 party’s dependents.

8 (c) If the court finds that the litigation does not constitute abusive litigation,
9 the court shall enter written or oral findings and the litigation shall proceed.

10 Nothing in this section or chapter shall be construed as limiting the court’s
11 inherent authority to control the proceedings and litigants before it.

12 § 1185. FILING OF A NEW CASE BY A PERSON SUBJECT TO AN
13 ORDER RESTRICTING ABUSIVE LITIGATION

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

18 (b) A person who is subject to an order restricting litigation against whom
19 prefiling restrictions have been imposed pursuant to this subchapter who
20 wishes to initiate a new case or file a motion in an existing case during the time
21 the person is under filing restrictions shall make an application to a judicial

1 officer. A judicial officer shall review such application and determine whether
2 the proposed litigation is abusive litigation or if there are reasonable and
3 legitimate grounds upon which the litigation is based. The judicial officer shall
4 determine whether a hearing is necessary.

5 (c)(1) If the judicial officer determines the proposed litigation is abusive
6 litigation based on reviewing the files, records, and pleadings, it is not
7 necessary for the person protected by the order to appear or participate in any
8 way. If the judicial officer is unable to determine whether the proposed
9 litigation is abusive without hearing from the person protected by the order,
10 then the court shall issue an order scheduling a hearing and notifying the
11 protected party of the party's right to appear or participate in the hearing. The
12 order shall specify whether the protected party is expected to submit a written
13 response. When possible, the protected party shall be permitted to appear
14 remotely.

15 (2) If the judicial officer believes the litigation that the party who is
16 subject to the prefiling order is making application to file will constitute
17 abusive litigation, the application shall be denied, dismissed, or otherwise
18 disposed of with prejudice.

19 (3) If the judicial officer believes that the litigation the party who is
20 subject to the prefiling order is making application to file will not be abusive
21 litigation, the judicial officer may grant the application and issue an order

1 permitting the filing of the case, motion, or pleading. The order shall be
2 attached to the front of the pleading to be filed with the clerk. The party who
3 is protected by the order shall be served with a copy of the order at the same
4 time as the underlying pleading.

5 (d) The judicial officer shall make findings and issue a written order
6 supporting the ruling. If the party who is subject to the order disputes the
7 finding of the judicial officer, the party may seek review of the decision as
8 provided by the applicable court rules.

9 (e) If the application for the filing of a pleading is granted pursuant to this
10 section, the period of time commencing with the filing of the application
11 requesting permission to file the action and ending with the issuance of an
12 order permitting filing of the action shall not be computed as a part of any
13 applicable period of limitations within which the matter must be instituted.

14 (f) If, after a party who is subject to prefiling restrictions has made
15 application and been granted permission to file or advance a case pursuant to
16 this section, any judicial officer hearing or presiding over the case, or any part
17 thereof, determines that the person is attempting to add parties, amend the
18 complaint, or is otherwise attempting to alter the parties and issues involved in
19 the litigation in a manner that the judicial officer reasonably believes would
20 constitute abusive litigation, the judicial officer shall stay the proceedings and

1 refer the case back to the judicial officer who granted the application to file, for
2 further disposition.

3 (g)(1) If a party who is protected by an order restricting abusive litigation is
4 served with a pleading filed by the person who is subject to the order, and the
5 pleading does not have an attached order allowing the pleading, the protected
6 party may respond to the case by filing a copy of the order restricting abusive
7 litigation.

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

16 Sec. 2. EFFECTIVE DATE

17 This act shall take effect on September 1, 2023.

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3 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE