

# House Calendar

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Tuesday, January 31, 2023

28th DAY OF THE BIENNIAL SESSION

House Convenes at 10:00 A.M.

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## TABLE OF CONTENTS

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**Page No.**

### **ACTION CALENDAR**

#### **Action Under Rule 52**

**J.R.S. 10** Joint resolution providing for the election of a Sergeant at Arms, and three Trustees of the University of Vermont and State Agricultural College.. [19](#)

**J.R.S. 11** Joint resolution establishing a procedure for the conduct of the election of the University of Vermont and State Agricultural College trustees by plurality vote by the General Assembly in 2023..... [19](#)

### **NOTICE CALENDAR**

#### **Favorable with Amendment**

**H. 45** Abusive litigation filed against survivors of domestic abuse, stalking, or sexual assault  
Rep. Rachelson for Judiciary ..... [19](#)

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**Action Under Rule 52**

**J.R.S. 10**

Joint resolution providing for the election of a Sergeant at Arms, and three Trustees of the University of Vermont and State Agricultural College

**(For text see House Journal January 27, 2023)**

**J.R.S. 11**

Joint resolution establishing a procedure for the conduct of the election of the University of Vermont and State Agricultural College trustees by plurality vote by the General Assembly in 2023

**(For text see House Journal January 27, 2023)**

**NOTICE CALENDAR**

**Favorable with Amendment**

**H. 45**

An act relating to abusive litigation filed against survivors of domestic abuse, stalking, or sexual assault

**Rep. Rachelson of Burlington**, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

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

Subchapter 5. Abusive Litigation

§ 1181. DEFINITION OF ABUSIVE LITIGATION

As used in this subchapter:

(1) “Abusive litigation” means:

(A) litigation where the following apply:

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

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

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

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

(III) a final foreign abuse prevention order;

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

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

(VI) a court determination of probable cause for a charge of domestic assault and the court imposed criminal conditions of release pertaining to the safety of the victim, which include distance restrictions or restrictions on contact with the victim; and

(iii) the litigation is being initiated, advanced, or continued primarily for the purpose of abusing, harassing, intimidating, threatening, or maintaining contact with the other party; and

(B) at least one of the following factors apply:

(i) claims, allegations, or other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

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

(iii) 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.

(2) “Foreign abuse prevention order” means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Rules for Family Proceedings, or 12 V.S.A. chapter 178. “Other state” and “issuing state” mean

any state other than Vermont and any federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

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

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

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

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

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

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

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

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

#### § 1182. ORDER RESTRICTING ABUSIVE LITIGATION

(a) A party may request from the court an order restricting abusive litigation if:

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

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

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

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

(iii) a final foreign abuse prevention order;

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

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

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

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

(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;

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

(4) orally in any hearing.

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

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

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

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

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

#### § 1183. HEARING; PROCEDURE

At the hearing, evidence of any of the following shall create 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 have been litigated within the past five years in the same court or any other court of competent jurisdiction.

(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 decided on the merits or dismissed.

(3) Within the last 10 years, the party allegedly engaging in abusive litigation has been sanctioned by any court 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.

(4) Any court 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.

#### § 1184. BURDEN OF PROOF

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

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

(3) identifying the party protected by the order and imposing prefiling restrictions upon the party found to have engaged in abusive litigation that pertains to any future litigation against the protected party or the protected party's dependents.

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

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

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

(b) A person who is subject to an order restricting litigation against whom prefiling restrictions have been imposed pursuant to this subchapter 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 make an application to a judicial officer. A judicial officer shall review such application and determine whether the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based. The judicial officer shall determine whether a hearing is necessary.

(c)(1) If the judicial officer determines the proposed litigation is abusive litigation based on reviewing the files, records, and pleadings, it is not necessary for the person protected by the order to appear or participate in any way. If the judicial officer is unable to determine whether the proposed litigation is abusive 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 or participate in the hearing. The order shall specify whether the protected party is expected to submit a written response. When possible, the protected party shall be permitted to appear remotely.

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

(3) If the judicial officer believes that the litigation the party who is subject to the prefiling order is making application to file will not be abusive litigation, the judicial officer may grant the application and issue an order permitting the filing of the case, motion, or pleading. The order shall be attached to the front of the pleading to be filed with the clerk. The party who is protected by the order shall be served with a copy of the order at the same time as the underlying pleading.

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

(e) If the application for the filing of a pleading is granted pursuant to this section, the period of time commencing with the filing of the application

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

(f) If, after a party who is subject to prefiling restrictions has made application and been granted permission to file or advance a case pursuant to this section, any judicial officer 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 judicial officer reasonably believes would constitute abusive litigation, the judicial officer shall stay the proceedings and refer the case back to the judicial officer who granted the application to file, for further disposition.

(g)(1) 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 may respond to the case by filing a copy of the order restricting abusive litigation.

(2) If it is brought to the attention of the court that a person against whom prefiling restrictions have been imposed has filed a new case or is continuing an existing case without having been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose of the matter. This action may be taken by the court 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 restricting abusive litigation.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2023.

**( Committee Vote: 11-0-0)**



## **For Informational Purposes**

### **CROSSOVER DATES**

The Joint Rules Committee established the following crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 17, 2023**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by **Friday March 17, 2023**.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 24, 2023**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

**Note:** The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

**Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation Capital bill, the Capital Construction bill and the Fee/Revenue bills).**