

1 S.28

2 Introduced by Senators White, Clarkson and McCormack

3 Referred to Committee on

4 Date:

5 Subject: Domestic relations; abuse prevention; abusive litigation

6 Statement of purpose of bill as introduced: This bill proposes to permit a court
7 to issue an order restricting abusive litigation if one party has been found by a
8 court to have abused, stalked, or sexually assaulted the other party.

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

11 It is hereby enacted by the General Assembly of the State of Vermont:

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

13 Subchapter 5. Abusive Litigation

14 § 1181. DEFINITION OF ABUSIVE LITIGATION

15 As used in this subchapter:

16 (1) “Abusive litigation” means:

17 (A) litigation where the following apply:

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

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

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

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

8 (III) a final foreign abuse prevention order;

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

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

14 (VI) a court determination of probable cause for a charge of
15 domestic assault and the court imposed criminal conditions of release
16 pertaining to the safety of the victim; and

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

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

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

5 (ii) allegations and other factual contentions made in the litigation
6 are without the existence of evidentiary support; or

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

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

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

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

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

1 (C) filing a motion, notice of court date, note for motion docket, or
2 order to appear;

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

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

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

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

14 § 1182. ORDER RESTRICTING ABUSIVE LITIGATION

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

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

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

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

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

8 (iii) a final foreign abuse prevention order;

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

11 (v) a conviction for domestic assault pursuant to 13 V.S.A. chapter
12 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or
13 sexual assault pursuant to 13 V.S.A. chapter 72; or

14 (vi) a court determination of probable cause for a charge of
15 domestic assault and the court imposed criminal conditions of release
16 pertaining to the safety of the victim.

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

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

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

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

2 (4) orally in any hearing.

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

6 (d) The Court Administrator shall create forms for the motion for an order
7 restricting abusive litigation and an order restricting abusive litigation, and the
8 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 dismissed on the merits or with prejudice.

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) In addition to dismissal or denial of any pending abusive litigation
18 within the jurisdiction of the court, the court shall enter an “order restricting
19 abusive litigation.” The order shall do each of the following:

1 (1) impose all costs of any abusive civil action pending in the court at
2 the time of the court's finding against the party advancing the abusive
3 litigation;

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

7 (3) identify the party protected by the order and impose prefiling
8 restrictions upon the party found to have engaged in abusive litigation for a
9 period of not less than 48 months nor more than 72 months.

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

14 § 1185. FILING OF A NEW CASE BY A PERSON SUBJECT TO AN
15 ORDER RESTRICTING ABUSIVE LITIGATION

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

20 (b) A person who is subject to an order restricting litigation against whom
21 prefiling restrictions have been imposed pursuant to this subchapter who

1 wishes to initiate a new case or file a motion in an existing case during the time
2 the person is under filing restrictions shall make an application to a judicial
3 officer. A judicial officer shall review such application and determine whether
4 the proposed litigation is abusive litigation or if there are reasonable and
5 legitimate grounds upon which the litigation is based. The judicial officer shall
6 determine whether a hearing is required.

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

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

20 (3) If the judicial officer believes that the litigation the party who is
21 subject to the prefiling order is making application to file will not be abusive

1 litigation, the judicial officer may grant the application and issue an order
2 permitting the filing of the case, motion, or pleading. The order shall be
3 attached to the front of the pleading to be filed with the clerk. The party who
4 is protected by the order shall be served with a copy of the order at the same
5 time as the underlying pleading.

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

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

15 (f) If, after a party who is subject to prefiling restrictions has made
16 application and been granted permission to file or advance a case pursuant to
17 this section, any judicial officer hearing or presiding over the case, or any part
18 thereof, determines that the person is attempting to add parties, amend the
19 complaint, or is otherwise attempting to alter the parties and issues involved in
20 the litigation in a manner that the judicial officer reasonably believes would
21 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 is under no obligation or duty to respond to the summons, complaint,
7 petition, or motion; to answer interrogatories; to appear for depositions; or to
8 perform any other responsive action required by rule or statute in a civil action.
9 The protected party may respond to the case by filing a copy of the order
10 restricting abusive litigation.

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

19 Sec. 2. EFFECTIVE DATE

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