

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 724

Representative Pelanda

Cosponsors: Representatives Duffey, Antonio, Rogers

A BILL

To amend section 2505.02 and to enact sections 1
2323.54, 2323.541, 2323.542, and 2323.543 of the 2
Revised Code to restrict persons designated as 3
abusive civil action plaintiffs from filing 4
civil actions against certain defendants without 5
the court's permission. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2505.02 be amended and sections 7
2323.54, 2323.541, 2323.542, and 2323.543 of the Revised Code be 8
enacted to read as follows: 9

Sec. 2323.54. As used in sections 2323.54 to 2323.543 of 10
the Revised Code: 11

(A) "Abusive civil action" means a civil action filed 12
against a defendant with whom the plaintiff shares a civil 13
action party relationship, intended primarily to harass or 14
maliciously injure the defendant, to which any of the following 15
apply: 16

(1) The claim is not warranted under existing law, cannot 17
be supported by a good faith argument for an extension, 18

modification, or reversal of existing law, or cannot be 19
supported by a good faith argument for the establishment of new 20
law. 21

(2) The allegations or other factual contentions have no 22
evidentiary support. 23

(3) The issues that are the basis of the civil action have 24
previously been litigated in one or more other courts by the 25
same plaintiff, and the previous actions have concluded 26
unfavorably to the plaintiff. 27

(B) "Civil action party relationship" means any of the 28
following categories of relationship between the plaintiff and 29
defendant: 30

(1) The plaintiff and defendant are current or former 31
spouses. 32

(2) The plaintiff and defendant live together or have 33
lived together. 34

(3) The plaintiff and defendant are adults who are or were 35
in a dating relationship. 36

(4) The plaintiff and defendant are adults related by 37
blood or adoption. 38

(5) The plaintiff and defendant are related or were 39
previously related by marriage. 40

(6) The plaintiff and defendant are adult children of 41
persons in a relationship described in divisions (B)(1) to (5) 42
of this section. 43

(C) "Dating relationship" has the same meaning as in 44
section 3113.31 of the Revised Code. 45

(D) "Harass or maliciously injure" means to file a civil 46
action with the intent to do any of the following: 47

(1) Exhaust or adversely impact the defendant's assets, 48
unless punitive damages were requested and found appropriate or 49
a change in circumstances provides a good faith basis to seek a 50
change to a financial award, support, or distribution of 51
resources; 52

(2) Prevent or interfere with the ability of the defendant 53
to raise a child for whom the defendant has legal custody unless 54
the plaintiff has a legal right to interfere and a good faith 55
basis for doing so; 56

(3) Force or attempt to force the defendant to agree to or 57
make adverse concessions concerning financial, custodial, 58
support, or other issues that have been previously litigated and 59
decided in favor of the defendant; 60

(4) Force or attempt to force the defendant to alter, 61
engage in, or refrain from engaging in conduct when the conduct 62
is lawful and the defendant has a right to engage in or refrain 63
from engaging in it; 64

(5) Impair or attempt to impair the health or well-being 65
of the defendant or a dependent of the defendant; 66

(6) Prevent, interfere with, or adversely impact the 67
ability of the defendant to pursue or maintain a livelihood or 68
lifestyle at the same standard or a standard better than the 69
defendant enjoyed prior to the filing of the action intended to 70
harass or maliciously injure the defendant; 71

(7) Injure the defendant's reputation in the community or 72
alienate the defendant's friends, colleagues, attorneys, or 73
professional associates by subjecting those parties, without 74

knowledge of or relevance to the civil action, to unreasonably 75
complex, lengthy, or intrusive interrogatories or depositions. 76

(E) "Abusive civil action plaintiff" means a person who 77
files a civil action that a court has determined to be an 78
abusive civil action and against whom prefiling restrictions 79
have been imposed pursuant to sections 2323.54 to 2323.543 of 80
the Revised Code. 81

(F) "Original defendant" means any person against whom an 82
abusive civil action was filed that resulted in prefiling 83
restrictions against the plaintiff. 84

Sec. 2323.541. (A) If a civil action is filed and the 85
defendant believes it to be an abusive civil action, the 86
defendant may raise the allegation in answer to the complaint or 87
the court may decide on its own motion that a hearing is 88
necessary to determine whether the civil action is an abusive 89
civil action. 90

(B) (1) If the defendant to a civil action alleges that the 91
action constitutes an abusive civil action, or upon the court's 92
own motion, the court shall conduct a hearing to determine the 93
merits of the allegation. At the hearing, the court shall hear 94
all relevant testimony and may require any affidavits, 95
documentary evidence, or other records the court considers 96
necessary. 97

(2) Evidence of any of the following creates a rebuttable 98
presumption that the civil action is an abusive civil action and 99
that prefiling restrictions should be imposed upon the abusive 100
civil action plaintiff: 101

(a) The same or substantially similar issues between the 102
same parties as in the alleged abusive civil action have been 103

litigated within the past five years in another court and the 104
actions were dismissed on the merits or with prejudice against 105
the plaintiff. 106

(b) The plaintiff used the same or substantially similar 107
issues that are the subject of the current civil action as the 108
basis for a complaint against the defendant to a regulatory or 109
licensing board and the board dismissed the complaint after an 110
administrative hearing. 111

(c) The plaintiff has been sanctioned under Rule 11 of the 112
Ohio Rules of Civil Procedure, section 2323.51 or 2323.52 of the 113
Revised Code, a similar rule of law in another state, or federal 114
law for a frivolous, vexatious, or abusive civil action within 115
ten years of filing the current civil action and the previous 116
civil action involved the same or substantially the same issues 117
between the same or substantially the same parties. 118

(d) A court of record in another jurisdiction has 119
determined that the plaintiff is an abusive civil action 120
plaintiff and the plaintiff is or has been under prefiling 121
restrictions in that jurisdiction. 122

(C) If a court finds by a preponderance of the evidence 123
that a person filing a civil action is an abusive civil action 124
plaintiff and that the case pending before the court is an 125
abusive civil action, the action shall be dismissed with 126
prejudice. In addition, the court shall do all of the following: 127

(1) Order the plaintiff to pay court costs, reasonable 128
attorney's fees, and other reasonable expenses incurred in 129
connection with the civil action; 130

(2) Impose prefiling restrictions upon any civil action 131
the plaintiff attempts to file against the defendant in that 132

court for a period of at least four years and not more than six 133
years. 134

(D) If a defendant alleges that a plaintiff is an abusive 135
civil action plaintiff and the court finds by a preponderance of 136
the evidence that the plaintiff is not, the court may grant to 137
the plaintiff such remedies as may be just, including final 138
judgment or partial judgment in favor of the plaintiff or 139
factual interpretations in favor of the plaintiff. The defendant 140
who raised the allegation may be ordered to pay court costs, 141
reasonable attorney's fees, and other reasonable expenses 142
incurred by the plaintiff in litigating the issue. 143

Sec. 2323.542. (A) Except as provided in division (B) of 144
this section, a person whom a court of record has determined to 145
be an abusive civil action plaintiff under section 2323.541 of 146
the Revised Code and against whom prefiling restrictions have 147
been imposed is prohibited from instituting or continuing a 148
civil action in that court against the original defendant or 149
defendants for the period of time the restrictions are in 150
effect. 151

(B) (1) Notwithstanding division (A) of this section, an 152
abusive civil action plaintiff against whom prefiling 153
restrictions are in effect may appear before the judge who 154
imposed the restrictions and seek permission to file a civil 155
action against the original defendant or defendants. The judge 156
may examine witnesses, including the abusive civil action 157
plaintiff and the original defendant or defendants, to determine 158
whether the proposed civil action is an abusive civil action or 159
whether there are reasonable and legitimate grounds for filing 160
the civil action. 161

(2) There is a rebuttable presumption that any proposed 162

civil action is an abusive civil action if any defendant in the 163
proposed civil action was a defendant in an action that was the 164
basis for the person being declared an abusive civil action 165
plaintiff. 166

(C) (1) If the judge who imposed the prefiling restrictions 167
believes that the proposed civil action would be an abusive 168
civil action, the judge shall deny the application and determine 169
a time when the person may next apply for permission to file a 170
civil action. 171

(2) If the judge reasonably believes that the proposed 172
civil action would not be an abusive civil action, the judge may 173
grant the application and issue an order permitting the filing 174
of the proposed civil action. The order shall be attached to the 175
front of the complaint when the plaintiff files the civil action 176
with the clerk. The defendant to the action shall be served with 177
a copy of the order at the same time the complaint is served. 178

(3) If a person who has been found to be an abusive civil 179
action plaintiff requests permission under this section to file 180
a civil action against the original defendant or defendants, the 181
period of time commencing with the filing of the application and 182
ending with the issuance of an order granting or denying the 183
application shall not be computed as a part of an applicable 184
period of limitations within which the civil action must be 185
instituted. 186

(D) A judge's decision on an application for permission to 187
file a civil action under this section and all accompanying 188
findings shall be recorded in writing on the record. The judge's 189
decision is a final order under section 2505.02 of the Revised 190
Code, and if the application is denied, the applicant has an 191
interlocutory right of appeal under that section. 192

Sec. 2323.543. (A) (1) Whenever it appears by suggestion of 193
the parties or otherwise that an abusive civil action plaintiff 194
has instituted or continued legal proceedings against the 195
original defendant or defendants without permission under 196
section 2323.542 of the Revised Code, the court shall dismiss 197
the proceedings instituted by the abusive civil action 198
plaintiff. 199

(2) If, after an abusive civil action plaintiff has 200
applied and been granted permission to file a civil action, the 201
judge presiding over the action determines that the person is 202
attempting to add parties, amend the complaint, or otherwise 203
alter the parties and issues involved in a manner that would 204
make the action an abusive civil action, the judge may deny the 205
motion to add parties, amend the complaint, or otherwise alter 206
the parties and issues involved in the proceeding. 207

(B) If the original defendant or defendants are served 208
with a complaint from an abusive civil action plaintiff and the 209
action is filed in a court other than the one that imposed 210
prefiling restrictions, and if the complaint does not have an 211
attached order from the judge who imposed the prefiling 212
restrictions, the defendant may obtain a certified copy of the 213
order and send it to the court where the civil action is pending 214
for its consideration. 215

(C) If an abusive civil action plaintiff files a civil 216
action against the original defendant or defendants and the 217
order granting permission to file the civil action is not 218
attached to the complaint or served on a defendant, the 219
defendant is under no obligation to respond to the complaint, 220
answer interrogatories, appear for depositions, or take any 221
other responsive action otherwise required by rule or statute in 222

<u>a civil action.</u>	223
Sec. 2505.02. (A) As used in this section:	224
(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.	225 226 227 228
(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.	229 230 231
(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.	232 233 234 235 236 237 238 239
(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:	240 241 242
(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;	243 244
(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;	245 246 247
(3) An order that vacates or sets aside a judgment or grants a new trial;	248 249
(4) An order that grants or denies a provisional remedy	250

and to which both of the following apply:	251
(a) The order in effect determines the action with respect	252
to the provisional remedy and prevents a judgment in the action	253
in favor of the appealing party with respect to the provisional	254
remedy.	255
(b) The appealing party would not be afforded a meaningful	256
or effective remedy by an appeal following final judgment as to	257
all proceedings, issues, claims, and parties in the action.	258
(5) An order that determines that an action may or may not	259
be maintained as a class action;	260
(6) An order determining the constitutionality of any	261
changes to the Revised Code made by Am. Sub. S.B. 281 of the	262
124th general assembly, including the amendment of sections	263
1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54,	264
2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43,	265
2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as	266
5164.07 by H.B. 59 of the 130th general assembly), and the	267
enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of	268
the Revised Code or any changes made by Sub. S.B. 80 of the	269
125th general assembly, including the amendment of sections	270
2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the	271
Revised Code;	272
(7) An order in an appropriation proceeding that may be	273
appealed pursuant to division (B) (3) of section 163.09 of the	274
Revised Code;	275
<u>(8) An order that denies an application for permission to</u>	276
<u>file a civil action under section 2323.542 of the Revised Code.</u>	277
(C) When a court issues an order that vacates or sets	278
aside a judgment or grants a new trial, the court, upon the	279

request of either party, shall state in the order the grounds 280
upon which the new trial is granted or the judgment vacated or 281
set aside. 282

(D) This section applies to and governs any action, 283
including an appeal, that is pending in any court on July 22, 284
1998, and all claims filed or actions commenced on or after July 285
22, 1998, notwithstanding any provision of any prior statute or 286
rule of law of this state. 287

Section 2. That existing section 2505.02 of the Revised 288
Code is hereby repealed. 289