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H.45

Introduced by Representatives Donnally of Hyde Park, LaLonde of South
Burlington, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Domestic relations; abuse prevention; abusive litigation

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

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

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

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:

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

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

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

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

11 (III) a final foreign abuse prevention order;

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

14 (V) a conviction for domestic assault pursuant to 13 V.S.A.
15 chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter
16 7; or sexual assault pursuant to 13 V.S.A. chapter 72; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 § 1182. ORDER RESTRICTING ABUSIVE LITIGATION

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

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

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

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

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

11 (iii) a final foreign abuse prevention order;

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

14 (v) a conviction for domestic assault pursuant to 13 V.S.A. chapter
15 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or
16 sexual assault pursuant to 13 V.S.A. chapter 72; or

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

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

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

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

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

5 (4) orally in any hearing.

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

9 (d) The Court Administrator shall create forms for the motion for an order
10 restricting abusive litigation and an order restricting abusive litigation, and the
11 forms shall be maintained by the clerks of the courts.

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

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

17 § 1183. HEARING; PROCEDURE

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

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

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

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

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

15 § 1184. BURDEN OF PROOF

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

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

4 (1) impose all costs of any abusive civil action pending in the court at
5 the time of the court’s finding against the party advancing the abusive
6 litigation;

7 (2) award the other party reasonable attorney’s fees and costs of
8 responding to the abusive litigation, including the cost of seeking the order
9 restricting abusive litigation; and

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

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

17 § 1185. FILING OF A NEW CASE BY A PERSON SUBJECT TO AN

18 ORDER RESTRICTING ABUSIVE LITIGATION

19 (a) Except as otherwise provided in this section, a person who is subject to
20 an order restricting abusive litigation is prohibited from filing, initiating,

1 advancing, or continuing the litigation against the protected party for the
2 period of time that the filing restrictions are in effect.

3 (b) A person who is subject to an order restricting litigation against
4 whom prefiling restrictions have been imposed pursuant to this subchapter who
5 wishes to initiate a new case or file a motion in an existing case during the time
6 the person is under filing restrictions shall make an application to a judicial
7 officer. A judicial officer shall review such application and determine whether
8 the proposed litigation is abusive litigation or if there are reasonable and
9 legitimate grounds upon which the litigation is based. The judicial officer shall
10 determine whether a hearing is required.

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

20 (2) If the judicial officer believes the litigation that the party who is
21 subject to the prefiling order is making application to file will constitute

1 abusive litigation, the application shall be denied, dismissed, or otherwise
2 disposed of with prejudice.

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

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

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

19 (f) If, after a party who is subject to prefiling restrictions has made
20 application and been granted permission to file or advance a case pursuant to
21 this section, any judicial officer hearing or presiding over the case, or any part

1 thereof, determines that the person is attempting to add parties, amend the
2 complaint, or is otherwise attempting to alter the parties and issues involved in
3 the litigation in a manner that the judicial officer reasonably believes would
4 constitute abusive litigation, the judicial officer shall stay the proceedings and
5 refer the case back to the judicial officer who granted the application to file, for
6 further disposition.

7 (g)(1) If a party who is protected by an order restricting abusive litigation is
8 served with a pleading filed by the person who is subject to the order, and the
9 pleading does not have an attached order allowing the pleading, the protected
10 party is under no obligation or duty to respond to the summons, complaint,
11 petition, or motion; to answer interrogatories; to appear for depositions; or to
12 perform any other responsive action required by rule or statute in a civil action.
13 The protected party may respond to the case by filing a copy of the order
14 restricting abusive litigation.

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

1 deemed necessary and appropriate for a violation of the order restricting
2 abusive litigation.

3 Sec. 2. EFFECTIVE DATE

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