

FINAL BILL REPORT

ESSB 6268

C 311 L 20
Synopsis as Enacted

Brief Description: Preventing abusive litigation between intimate partners.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Rolfes, Kuderer, Wellman, Darneille, Hasegawa, Wilson, C. and Das).

Senate Committee on Law & Justice
Senate Committee on Ways & Means
House Committee on Civil Rights & Judiciary

Background: Washington's domestic violence manual for judges recognizes abusive litigation against domestic violence survivors as a common practice among abusers who repeatedly misuse court proceedings to control, harass, intimidate, coerce, or impoverish survivors. Abusive litigation arises in a variety of contexts such as family law, protection orders, and parenting plan cases. These tactics often involve repeated contempt motions, starting multiple new cases in different jurisdictions, and making other frivolous motions or appeals. Even if a case has no merit, the survivor must spend time, money, and emotional resources responding to the abusive claims. Abusive litigation may coerce survivors to make concessions in cases just to end the litigation.

Current law gives courts inherent authority to facilitate the orderly administration of justice, including authority to address abusive litigation tactics. For example, courts may grant injunctive relief to address abusive litigation or impose sanctions under Civil Rule 11 when litigants abuse judicial processes. Washington's courts have ruled there is no absolute and unlimited constitutional right of access to courts. Due process requires only a reasonable right of access, or a meaningful opportunity to be heard, absent an overriding state interest. Courts must still ensure a party can access the courts to present a new and independent matter. Washington courts have held that a court order restricting access to the courts must not be absolute and should provide a safety valve for emergencies.

In 2018, Tennessee enacted an abusive civil actions law. Tennessee's law creates a hearing process for a person who is a party to an abusive civil action brought by a former domestic partner or family member. The law allows the party to request a court order dismissing abusive litigation or restricting filing of new cases. Tennessee defines an abusive civil action as litigation filed primarily to harass or cause malicious injury, subject to specific statutory requirements. Tennessee also authorizes a separate civil action declaring a person as an abusive civil action offender, and established a registry of abusive civil action offenders.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under Tennessee's recent law, an abusive civil action offender may seek relief from a court's order limiting their ability to file new civil actions against a former domestic partner or adult family member in specific circumstances.

Summary: The bill provides a process for a party to litigation to request a court order restricting abusive litigation as a nonexclusive remedy, when the parties are current or former intimate partners, one party has been found by the court to have committed domestic violence against the other, and at least one of the following three factors apply:

- the legal contentions are not warranted by existing law, a reasonable argument for extending existing law, or establishment of new law;
- the allegations and factual contentions have no evidentiary support; or
- one or more issues have already been filed elsewhere, litigated, and disposed of unfavorably to the filing party.

The request may be made in an answer or responsive pleadings in a case, by motion during an open case, by a separate motion within five years of entry of a protective order even if the order is expired, or by the court on its own motion. The filing fee is waived for the party asking the court to restrict continuing abusive litigation. Abusive litigation, intimate partner, and litigation is defined. If a court is able to verify the intimate partner relationship, and that the party requesting the order has been a domestic violence victim, or cannot verify these two criteria are both true, a court hearing decides if the litigation meets the law's definition of abusive litigation.

At hearing, any of the following creates a rebuttable presumption of abusive litigation:

- evidence showing the parties have litigated similar issues within the last five years;
- evidence showing similar issues have been raised within the last five years and dismissed with prejudice;
- the court has sanctioned the alleged abusive litigation perpetrator under Civil Rule 11 or similar rules within the last ten years; or
- a court of record in another judicial district has previously found the alleged perpetrator engaged in abusive litigation or similar conduct and ordered pre-filing restrictions.

If the court finds the party is engaging in abusive litigation, based on a preponderance of evidence, the action is dismissed with prejudice, the court enters a restricting order, and costs are awarded.

A party subject to a pre-filing restriction must obtain the court's permission before filing a new case. The court may take testimony, examine court records, or consider other evidence to determine if reasonable and legitimate grounds exist for filing a new case. If the court decides the case requested for filing is not abusive litigation, then the court enters an order permitting the filing. The order filed and served, together with the pleading, initiate the new case. If the court denies the filing, the unsuccessful party may seek review of the decision and may be appealed as provided by the court rules. If a party restricted from filing a new case does not obtain pre-filing permission from the court, the court dismisses the case. The current law restricting temporary or permanent parenting plans by making abusive litigation an abusive use of conflict is amended. A good faith report of child abuse to police, medical providers, or the child protective services agency is not a basis for finding abusive use of

conflict. A court may enter an order restricting abusive litigation in a domestic violence case within five years of the date finding domestic violence or under other family law chapters, or as a stand alone matter. The act is liberally construed to protect domestic violence survivors from abusive litigation and contains a severability clause.

Votes on Final Passage:

Senate	48	0	
House	90	6	(House amended)
Senate	49	0	(Senate concurred)

Effective: January 1, 2021