

STAND. COM. REP. NO. **2895**

Honolulu, Hawaii

MAR 01 2024

RE: S.B. No. 2685
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2685 entitled:

"A BILL FOR AN ACT RELATING TO ABUSIVE LITIGATION,"

begs leave to report as follows:

The purpose and intent of this measure is to establish judicial procedures to prevent and remedy abusive litigation.

Your Committee received testimony in support of this measure from the Hawai'i State Coalition Against Domestic Violence, Domestic Violence Action Center, Hawaii Women's Coalition, Democratic Party of Hawai'i Women's Caucus; and eight individuals.

Your Committee received comments on this measure from the Judiciary.

Your Committee finds that abusive litigation in the intimate partner violence context is a unique issue that needs to be addressed. Individuals who abuse their intimate partners may also take advantage of court proceedings to control, harass, intimidate, coerce, and impoverish the abused partner, even after a relationship has ended. Even if a lawsuit is meritless, forcing a survivor to spend time, money, and emotional resources responding to the action provides a means for the abuser to assert power and control over the survivor. Your Committee notes that two states, Tennessee and Washington, have already enacted laws to



prevent and remedy abusive litigation. This measure will provide a critical new protective tool for intimate partner violence survivor safety, empowerment, financial independence, economic justice, and peace.

Your Committee has amended this measure by:

- (1) Deleting language that would have excluded persons who have a child in common that was conceived through sexual assault from the definition of "intimate partners";
- (2) Deleting language that would have excluded persons who have or have had a dating relationship from the definition of "intimate partners" if one or more person is less than thirteen years of age;
- (3) Inserting language defining "dating relationship" the same as it is defined in section 586-1, Hawaii Revised Statutes;
- (4) Inserting language providing that "intimate" in regards to the term "intimate partner" has no romantic connotations;
- (5) Deleting language that would have defined "litigation" as it is defined in section 634J-1, Hawaii Revised Statutes;
- (6) Defining the term "litigation" to mean any civil action or proceeding, commenced, maintained, or pending in any state or federal court of record;
- (7) Inserting language clarifying that abusive litigation occurs where the opposing parties have a current or former intimate partner relationship or have filed on behalf of a minor or incapacitated person who has a current or former intimate partner relationship;
- (8) Inserting language clarifying that abusive litigation occurs where the party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed intimate partner violence against the other party including by a temporary



restraining order or order for protection that the court found was necessary due to domestic violence;

- (9) Inserting language clarifying that abusive litigation occurs where the parties had agreed to an order for protection in a case of domestic violence pursuant to:
- (A) A criminal conviction or a plea of nolo contendere, in the State or any other jurisdiction for the crimes identified in sections 709-906, 711-1106, or 711-1106.5, Hawaii Revised Statutes; or a filing for any offense related to a domestic violence offense;
 - (B) A pending criminal charge, in the State or any other jurisdiction, of domestic violence, as a result of which a court has imposed criminal conditions of release pertaining to the safety of the victim;
 - (C) A temporary restraining order issued pursuant to section 586-4, Hawaii Revised Statutes;
 - (D) An order for protection issued pursuant to section 586-3, Hawaii Revised Statutes;
 - (E) A protective order issued pursuant to section 586-5.5, Hawaii Revised Statutes;
 - (F) A no contact order pursuant to section 709-906(4), Hawaii Revised Statutes;
 - (G) A foreign protective order credited pursuant to section 586-21, Hawaii Revised Statutes;
 - (H) An order or decree issued pursuant to section 571-46 or section 580-74, Hawaii Revised Statutes; or
 - (I) A signed affidavit from a domestic violence or sexual assault agency that assists victims of domestic violence and sexual assault;



- (10) Deleting language that would have specified that litigation is harassing, intimidating, or maintaining contact with the other party when the litigation is filed with the intent or is primarily designed to exhaust, deplete, impair, or adversely impact the other party's financial resources unless punitive damages were requested and appropriate or a change in the circumstances of the parties provides a good faith basis to seek a change to a financial award, support, or distribution of resources;
- (11) Inserting language clarifying that litigation is harassing, intimidating, or maintaining contact with the other party when the litigation is filed with the intent or is primarily designed to, among other actions, prevent or interfere with the ability of the other party to raise a child or children for whom the other party has sole or joint legal custody;
- (12) Deleting language that would have specified that litigation is harassing, intimidating, or maintaining contact with the other party when the litigation is filed with the intent or primarily designed to prevent or interfere with the ability of the other party to raise a child or children for whom the other party has legal custody in the manner the other party deems appropriate unless the party filing the litigation has a lawful right to interfere and a good faith basis for doing so;
- (13) Deleting language that would have specified that litigation is harassing, intimidating, or maintaining contact with the other party when the litigation is filed with the intent or primarily designed to force, coerce, or attempt to force or coerce the other party to alter, engage in, or refrain from engaging in lawful conduct which the other party has the right to engage in;
- (14) Deleting language that would have specified that litigation is harassing, intimidating, or maintaining contact with the other party when the litigation is filed with the intent or primarily designed to prevent,



interfere, or adversely impact the ability of the other party to pursue or maintain a livelihood or lifestyle at the same or better standard as the other party enjoyed prior to the filing of the action, primarily for the purpose of harassing or maliciously injuring the civil action defendant;

- (15) Inserting language clarifying that litigation that is filed with the intent or primarily designed to impair, diminish, or tarnish the other party's reputation in the community or alienate the other party's friends, colleagues, attorneys, or professional associates by, including but not limited to, subjecting parties without knowledge of or not reasonably relevant to the litigation to unreasonably or unnecessarily complex, lengthy, or intrusive interrogatories or depositions is litigation that is harassing, intimidating, or maintaining contact with the other party;
- (16) Deleting language that would have allowed evidence of the same or substantially similar issues between the same or substantially similar parties that were litigated within the past five years in the same court or any other court of competent jurisdiction to 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;
- (17) Inserting language to allow evidence of proffered legal claims not based on existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law to 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;
- (18) Deleting language that would have allowed evidence of the same or substantially similar issues between the same or substantially similar parties that have been raised, pled, or alleged in the past five years and were dismissed on the merits or with prejudice to 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;

- (19) Inserting language to allow evidence of allegations and other factual contentions made without adequate evidentiary support or that are unlikely to have evidentiary support after a reasonable opportunity for further investigation to 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;
- (20) Inserting language to allow evidence of an issue or issues that are the basis of the litigation, that have previously been filed in one or more other courts or jurisdictions and have prompted actions which have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation, to create a rebuttable presumption that the litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party;
- (21) Clarifying that evidence that a court of record in another judicial circuit or jurisdiction has determined 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 pre-filing restrictions creates 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;
- (22) Deleting language that would have required an order restricting abusive litigation to impose pre-filing restrictions upon the party found to have engaged in abusive litigation for a period of not less than forty-eight months;



- (23) Inserting language allowing the time period of prefiling restrictions imposed by an order restricting abusive litigation to be extended beyond the maximum if the party found to have engaged in abusive litigation, since the effective date of the order, has engaged in further abusive litigation or caused further abuse including coercive control, domestic abuse, extreme psychological abuse, and malicious property damage;
- (24) Specifying that a person subject to an order restricting abusive litigation 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 first file an application or motion before the court that imposed the order;
- (25) Inserting language clarifying that, based on reviewing the records as well as any evidence submitted as sworn statements from the person who is subject to the order restricting abusive litigation, if the court determines the proposed litigation is abusive litigation, then it is not necessary for the person protected by the order to appear or participate in any way;
- (26) Requiring the courts to create new forms for the motion for order restricting abusive litigation and develop relevant instructions by January 1, 2025, instead of September 1, 2024; and
- (27) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2685, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2685, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,

Karl Rhoads

KARL RHOADS, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No. :* SB 2685	Committee Referral: JDC	Date: 02/01/24
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The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended Pass, with amendments Hold Recommit
2312 2311 2310 2313

Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
GABBARD, Mike (VC)	✓			
ELEFANTE, Brandon J.C.	✓			
SAN BUENAVENTURA, Joy A.	✓			
AWA, Brenton	✓			
TOTAL	5	0	0	0

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:


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***Only one measure per Record of Votes**