

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 795
May 3, 2021
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30332-ND-67

Short Title: Regulate and Restrict Abusive Litigation. (Public)

Sponsors: Representative Turner.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE AND RESTRICT THE USE OF LITIGATION FOR THE PURPOSE
3 OF HARASSING, INTIMIDATING, MAINTAINING CONTACT WITH, OR
4 RETALIATING AGAINST ANOTHER PERSON.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

7 **"Chapter 1H.**

8 **"North Carolina Abusive Litigation Act.**

9 **"§ 1H-1. Short title.**

10 This Chapter may be cited as the North Carolina Abusive Litigation Act.

11 **"§ 1H-2. Definitions.**

12 The following definitions apply in this Chapter:

- 13 (1) Filing party. – The party that has filed, initiated, advanced, or continued
14 litigation.
15 (2) Litigation. – Any motion, pleading, petition, or other court filing.
16 (3) Opposing party. – The party against whom the filing party has filed, initiated,
17 advanced, or continued litigation.
18 (4) Protected person. – A person protected by an order restricting abusive
19 litigation.
20 (5) Restricted person. – A person subject to an order restricting abusive litigation.

21 **"§ 1H-3. Scope of abusive litigation.**

22 (a) For the purposes of this Chapter, abusive litigation shall exist when:

- 23 (1) The litigation consists of any of the following:
24 a. Opposing parties that have a personal relationship as defined in
25 G.S. 50B-1(b).
26 b. The filing party has been found by a court to have committed an act of
27 domestic violence as defined in G.S. 50B-1(a) against the opposing
28 party in:
29 1. A court order issued under G.S. 50B-2, excluding ex parte
30 orders.
31 2. A court order issued under Chapter 50 of the General Statutes,
32 excluding ex parte orders.
33 3. A court order issued after proper notice and an opportunity to
34 be heard that includes findings that the filing party committed
35 acts against the opposing party that would otherwise constitute
36 domestic violence under G.S. 50B-1(a).



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- 1 4. A court order that finds the filing party has committed an act
2 of rape or other sexual offense against the opposing party under
3 Article 7B of Chapter 14 of the General Statutes.
4 c. An intent on the part of the filing party to harass, intimidate, maintain
5 contact with, or retaliate against the opposing party.
6 (2) At least one of the following situations applies:
7 a. Claims, allegations, and other legal contentions made in the litigation
8 are not warranted by existing law or by a reasonable argument for the
9 extension, modification, or reversal of existing law, or the
10 establishment of new law.
11 b. Allegations and other factual contentions made in the litigation are
12 without the existence of evidentiary support.
13 c. An issue or issues that are the basis of the litigation have previously
14 been filed or litigated and disposed of unfavorably to the filing party.
15 (b) For the purposes of this Chapter, abusive litigation shall not apply to filings that meet
16 any of the following criteria:
17 (1) Any initial complaint filed in good faith under G.S. 50-13.1.
18 (2) Any filing made pursuant to G.S. 50-13.7 that, in good faith, alleges a
19 substantial change of circumstances.
20 (3) Any criminal process based upon evidence provided by the filing party.

21 "**§ 1H-4. Hearing procedures.**"

- 22 (a) If an opposing party asserts that they are being subjected to abusive litigation, the
23 court shall set the matter for hearing on the next available court date.
24 (b) At the hearing to determine the presence of abusive litigation, evidence of any of the
25 following creates a rebuttable presumption that litigation is being filed, initiated, advanced, or
26 continued for the purpose of harassing, intimidating, maintaining contact with, or retaliating
27 against the opposing party:
28 (1) The same or substantially similar issues between the same or substantially
29 similar parties have been litigated within the past five years in the same court
30 or any other court of competent jurisdiction.
31 (2) The same or substantially similar issues between the same or substantially
32 similar parties have been raised, pled, or alleged in the past five years and
33 were dismissed on the merits or with prejudice.
34 (3) Within the last 10 years, the filing party has been sanctioned for filing,
35 initiating, advancing, or continuing litigation that was found to be frivolous,
36 vexatious, intransigent, or brought in bad faith involving the same opposing
37 party.
38 (4) A court of record has previously determined that the filing party engaged in
39 abusive litigation or similar conduct and has been subject to a court order
40 imposing prefiling restrictions.

41 "**§ 1H-5. Burden of proof; dismissal or denial of abusive litigation; entry of order**
42 restricting abusive litigation."

- 43 (a) If the court finds by a preponderance of the evidence that any or all of the litigation
44 pending before the court constitutes abusive litigation, the abusive litigation shall be dismissed,
45 denied, stricken, or resolved by other disposition with prejudice.
46 (b) In addition, if the court finds abusive litigation, the court shall enter an order
47 prohibiting abusive litigation, which shall do each of the following:
48 (1) Impose all costs of any abusive litigation against the filing party.
49 (2) Award the opposing party reasonable attorneys' fees and costs of responding
50 to the abusive litigation, including the cost of seeking the order restricting
51 abusive litigation.

1 (3) Identify the protected person and impose prefiling restrictions upon the
2 restricted person for a period of not less than 48 months nor more than 72
3 months.

4 **§ 1H-6. Proceeding when abusive litigation is not present.**

5 If the court finds by a preponderance of the evidence that any or all of the litigation pending
6 before the court does not constitute abusive litigation, the court shall enter written findings to
7 that effect and the portions of the litigation found not to be abusive shall proceed.

8 **§ 1H-7. Filing of new case or motion by person subject to order restricting abusive**
9 **litigation; requirements and procedures.**

10 (a) Except as provided in this section, a restricted person is prohibited from filing,
11 initiating, advancing, or continuing litigation against the protected party for the period of time
12 the filing restrictions are in effect.

13 (b) Notwithstanding subsection (a) of this section, a restricted person may seek
14 permission to file litigation using the procedure set out in subsection (c) of this section.

15 (c) A restricted person against whom prefiling restrictions have been imposed pursuant
16 to this Chapter may request permission of the court to engage in litigation against a protected
17 party. The request shall be heard and decided by the judicial official who imposed the prefiling
18 restrictions.

19 The protected person must be provided notice of the request for permission to engage in
20 litigation by the restricted party and given the opportunity to participate in the hearing on the
21 request. However, the protected party is not required to attend the hearing, and the failure to
22 attend or to object to the request for permission shall not be considered against the protected
23 party or considered to be consent by the protected party to litigation by the restricted party. The
24 notice to the protected party shall specify whether the protected person is expected to submit a
25 written response and shall inform the protected party that appearance at the hearing is permitted
26 but not required. When possible, the protected party shall be permitted to appear remotely by
27 two-way audio-video communication and shall be provided with instructions that explain how to
28 effectuate a remote appearance.

29 (d) When considering the restricted party's request for permission to file litigation, the
30 judicial official may examine witnesses, court records, and any other evidence to determine if
31 the proposed litigation would constitute abusive litigation under this Chapter. If, based upon a
32 review of the records as well as any evidence presented during the hearing, the judicial official
33 concludes that the proposed litigation would constitute abusive litigation, the application to file
34 the proposed litigation shall be denied, dismissed, or otherwise disposed with prejudice.

35 (e) If the judicial official concludes that the proposed litigation would not constitute
36 abusive litigation, the judicial official shall issue an order permitting the proposed litigation to
37 proceed.

38 A copy of the order allowing the litigation to proceed shall be served upon the protected party
39 and attached to the front of any litigation filed by the restricted party with the clerk of superior
40 court.

41 If a protected person is served with litigation filed by a restricted person in violation of an
42 order entered pursuant to this Chapter, the protected person may sufficiently respond to the
43 litigation by filing a copy of the order restricting abusive litigation but is under no obligation to
44 respond to the litigation, appear for depositions in the litigation, or take any responsive action
45 otherwise required by the rules and statutes that govern civil proceedings.

46 (f) If a restricted person's application for permission to file proposed litigation is granted
47 under this section, the period of time commencing with the filing of the application and ending
48 with the issuance of an order permitting the litigation to proceed shall not be computed as a part
49 of any applicable period of limitations within which the matter must be instituted.

50 (g) If, after an application to proceed with litigation has been granted under this section,
51 a judicial official presiding over any part of the litigation determines that the restricted person is

1 attempting to add parties to the litigation, amend the litigation, or otherwise alter the parties or
2 issues involved in the litigation in a manner that the judicial official finds would constitute
3 abusive litigation under this Chapter, the judicial official shall stay the proceedings and refer the
4 litigation to the judicial official who granted the application to proceed with litigation.

5 (h) If the court finds that a restricted person against whom prefiling restrictions have been
6 imposed has engaged in new or existing litigation against a protected person without having been
7 granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose
8 of the litigation. This action may be taken by the court on the court's own motion or initiative. In
9 addition, the court may impose such other sanctions against the restricted party as the court deems
10 necessary and appropriate in response to the violation of the order restricting abusive litigation.
11 A violation of an order imposing prefiling restrictions is also punishable by criminal contempt
12 pursuant to Chapter 5A of the General Statutes.

13 (i) If the judicial official who imposed the prefiling restrictions against a restricted
14 person is no longer serving in the same capacity in the same judicial district where the restrictions
15 were placed, or is otherwise unavailable for any reason, any other judicial official in the judicial
16 district where the restrictions were placed, as assigned by the chief district court judge for cases
17 in district court and the resident superior court judge for cases in superior court, may perform the
18 review required and permitted by this section.

19 **"§ 1H-8. Appeals.**

20 An appeal of an order entered pursuant to this Chapter is otherwise provided by law.

21 **"§ 1H-9. Court authority.**

22 Nothing in this Chapter shall be construed as limiting the court's inherent authority to control
23 the proceedings and litigants before it.

24 **"§ 1H-10. Nonexclusive remedy.**

25 The provisions of this Chapter are nonexclusive and do not affect any other remedy available
26 to a protected person or to a court."

27 **SECTION 2.** This act becomes effective October 1, 2021, and applies to actions,
28 motions, pleadings, petitions, and other court filings filed on or after that date.