

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1533

Introduced by

Representatives Boschee, Hanson, Ista, Klemin, Pyle, Roers Jones, Schneider

Senator Braunberger

1 A BILL for an Act to create and enact a new chapter to title 14 of the North Dakota Century
2 Code, relating to protecting survivors of domestic abuse from abusive litigation.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 14 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 1. "Abusive litigation" means litigation in which:

8 a. The parties have or had an intimate partner relationship or any other person with
9 a sufficient relationship to the abusing person as determined by the court under
10 section 14-07.1-02;

11 b. The filing party has been found by a court to have committed an act of domestic
12 violence or disorderly conduct against the opposing party pursuant to a court
13 order entered under chapter 14-07.1, 14-09, or 12.1-32.2, or an equivalent
14 ordinance from another state, provided the issuing court made a specific finding
15 of domestic violence or disorderly conduct, or the filing party has a prior
16 conviction relating to domestic violence against the opposing party under chapter
17 12.1-17;

18 c. There is intent on the part of the filing party to harass, intimidate, maintain
19 contact with, or retaliate against the opposing party; and

20 d. At least one of the following is true:

21 (1) Claims, allegations, and other legal contentions made in the litigation are
22 not warranted by existing law or by a reasonable argument for the
23 extension, modification, or reversal of existing law, or the establishment of
24 new law;

- 1 (2) Allegations and other factual contentions made in the litigation lack
2 evidentiary support;
3 (3) The actions comprising the basis of the litigation previously have been filed
4 or litigated in one or more other courts or jurisdictions and have been
5 disposed of unfavorably against the party filing, initiating, advancing, or
6 continuing the litigation; or
7 (4) The filing party has been sanctioned previously for filing, initiating,
8 advancing, or continuing litigation found to be frivolous, vexatious,
9 intransigent, or brought in bad faith.

10 2. "Filing party" means the party who has filed, initiated, advanced, or continued
11 litigation.

12 3. "Intimate partner" means a spouse or domestic partner, former spouse or domestic
13 partner, an individual who has a child with a filing party regardless of whether the
14 individual has been married to the filing party or lived with the filing party, or an
15 individual who has or had a dating relationship with the filing party.

16 4. "Litigation" means any motion, pleading, petition, or other court filing.

17 5. "Opposing party" means the party against whom the filing party has filed, initiated,
18 advanced, or continued litigation.

19 6. "Restricted individual" means an individual subject to an order restricting abusive
20 litigation.

21 **Order restricting abusive litigation - Who may request.**

22 1. A party to a case may request from the court an order restricting abusive litigation if
23 the parties are current or former intimate partners and the party against whom the
24 request is being made has been found by the court to have committed domestic
25 violence or disorderly conduct against the other party. A request may be made:

26 a. In an answer or response to the litigation being filed, initiated, advanced, or
27 continued;

28 b. By motion made at any time during any opening or ongoing case; or

29 c. By a separate motion made under this chapter within five years of the entry of an
30 order for protection even if the order has expired.

- 1 2. Any court of competent jurisdiction by its own motion may determine that a hearing
2 pursuant to this Act is necessary to determine if a party is engaging in abusive
3 litigation.

4 **Instructions, brochures, and forms - Fees.**

- 5 1. The administrative office of the supreme court shall provide the instructions,
6 brochures, standard petition, and order for protection forms necessary to implement
7 this chapter.
8 2. A court may not charge a filing fee to a party filing a petition for an order restricting
9 abusive litigation regardless of whether the petition is filed under this chapter or
10 another chapter in this title.
11 3. This chapter does not preclude an individual from seeking any other remedy available
12 under the law.

13 **Hearing - Procedure - Rebuttable presumption.**

- 14 1. If an opposing party asserts the party is subject to abusive litigation, the court shall set
15 the matter for hearing on the next available court date.
16 2. At the hearing to determine the presence of abusive litigation, evidence of any of the
17 following creates a rebuttable presumption that litigation is being filed, initiated,
18 advanced, or continued for the purpose of harassing, intimidating, maintaining contact
19 with, or retaliating against the opposing party:
20 a. The same or substantially similar issues between the same or substantially
21 similar parties have been litigated within the past five years in the same court or
22 any other court of competent jurisdiction;
23 b. The same or substantially similar issues between the same or substantially
24 similar parties have been raised, pled, or alleged in the past five years and were
25 dismissed on the merits or with prejudice;
26 c. Within the last ten years, the filing party has been sanctioned for filing, initiating,
27 advancing, or continuing litigation found to be frivolous, vexatious, intransigent, or
28 brought in bad faith involving the same opposing party; or
29 d. A court of record in another judicial district has determined the filing party
30 engaged in abusive litigation or similar conduct and has been subject to a court
31 order imposing prefiling restrictions.

Burden of proof - Dismissal - Entry of order restricting abusive litigation.

1. If a court finds by a preponderance of the evidence any of the litigation pending before the court constitutes abusive litigation, the court shall dispose of the litigation with prejudice.
2. If the court finds abusive litigation, the court shall enter an order restricting abusive litigation. The order must:
 - a. Impose all costs of the abusive litigation against the filing party;
 - b. Award the opposing party reasonable attorney's fees and costs associated with responding to the abusive litigation, including the cost of seeking the order restricting abusive litigation; and
 - c. Identify the protected party and impose prefiling restrictions upon the restricted individual for a period of at least forty-eight months and no more than seventy-two months.

Proceeding when abusive litigation is not present.

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

Filing of new case or motion by individual subject to order restricting abusive litigation - Requirements and procedure.

1. Except as provided in this section, a restricted individual is prohibited from filing, initiating, advancing, or continuing litigation against the protected party for the period of time the filing restrictions are in effect.
2. Notwithstanding subsection 1, a restricted individual may seek permission to file litigation using the procedure set forth in this section.
3. A restricted individual against whom prefiling restrictions have been imposed under this chapter may request permission of the court to engage in litigation against a protected party. The judicial official who imposed the prefiling restrictions shall hear the request.
4. When considering the restricted party's request for permission to file litigation, the judicial officer may examine witnesses, court records, and any other evidence to determine if the proposed litigation would constitute abusive litigation under this chapter. If, based on a review of the record as well as any evidence presented during

1 the hearing, the judicial official concludes the proposed litigation would constitute
2 abusive litigation, the application to file the proposed litigation must be denied,
3 dismissed, or otherwise disposed with prejudice.

4 5. If the judicial official concludes the proposed litigation would not constitute abusive
5 litigation, the judicial official shall issue an order permitting the proposed litigation to
6 proceed. A copy of the order allowing the litigation to proceed must be served upon the
7 protected party and attached to the front of any litigation filed by the restricted party
8 with the clerk of court. If a protected individual is served with litigation filed by a
9 restricted individual in violation of any order entered under this chapter, the protected
10 individual sufficiently may respond to the litigation by filing a copy of the order
11 restricting abusive litigation, but is under no obligation to respond to the litigation,
12 appear for depositions in the litigation, or take any responsive action otherwise
13 required by the rules and statutes that govern civil proceedings.

14 6. If a restricted individual's application for permission to file proposed litigation is granted
15 under this section, the time beginning with the filing of the application and ending with
16 the issuance of an order permitting the litigation to proceed may not be computed as a
17 part of any applicable period of limitation within which the matter must be instituted.

18 7. If, after a party subject to prefiling restrictions has applied and been granted
19 permission to file or advance a case under this section, any judicial officer hearing or
20 presiding over the case determines the individual is attempting to add parties, amend
21 the complaint, or otherwise attempting to alter the parties and issues involved in the
22 litigation in a manner the judicial officer reasonably believes would constitute abusive
23 litigation under this chapter, the judicial officer shall stay the proceedings and refer the
24 case to the judicial officer who granted the application to proceed with litigation.

25 8. If the court discovers an individual against whom prefiling restrictions have been
26 imposed has filed a new case or is continuing an existing case without having been
27 granted permission under this section, the court shall dismiss, deny, or otherwise
28 dispose of the matter. This action may be taken by the court on the court's own motion
29 or initiative. The court may take any action against the perpetrator of abusive litigation
30 the court deems necessary and appropriate for a violation of the order restricting
31 abusive litigation.

- 1 9. If the judicial officer who imposed the prefiling restrictions is no longer serving in the
- 2 same capacity in the same judicial district in which the restrictions were placed or is
- 3 otherwise unavailable for any reason, any other judicial officer in that judicial district
- 4 may perform the review required under this section.