
SENATE BILL 6154

State of Washington

66th Legislature

2020 Regular Session

By Senators Rolfes, Kuderer, Wellman, and Darneille

Prefiled 01/08/20.

1 AN ACT Relating to abusive civil actions; and adding a new
2 chapter to Title 2 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires
6 otherwise.

7 (1) "Abusive civil action" means a civil action filed by a
8 plaintiff against a defendant with whom the plaintiff shares a civil
9 action party relationship primarily to harass or maliciously injure
10 the defendant and at least one of the following factors are
11 applicable:

12 (a) Claims, allegations, and other legal contentions made in the
13 civil action are not warranted by existing law or by a reasonable
14 argument for the extension, modification, or reversal of existing
15 law, or the establishment of new law;

16 (b) Allegations and other factual contentions made in the civil
17 action are without the existence of evidentiary support; or

18 (c) Issue or issues that are the basis of the civil action have
19 previously been filed in one or more other courts or jurisdictions by
20 the same, and the actions have been litigated and disposed of

1 unfavorably to the plaintiff. An abusive civil action does not
2 include a petition for any type of protective order.

3 (2) "Abusive civil action plaintiff" means a person who files a
4 civil action that a court of record has determined to be an abusive
5 civil action and against whom prefiling restrictions have been
6 imposed pursuant to this chapter.

7 (3) "Civil action" means a civil action, as defined in the
8 superior court civil rules.

9 (4) "Civil action defendant" means a person or persons against
10 whom a civil action has been filed that a court of record has
11 determined to be an abusive civil action and imposed prefiling
12 restrictions against the abusive civil action plaintiff pursuant to
13 this chapter.

14 (5) "Civil action party relationship" means that the plaintiff
15 commencing a civil action and the civil action defendant fall within
16 one of the following categories:

17 (a) Adults who are current or former spouses;

18 (b) Adults who live together or who have lived together;

19 (c) Adults who are dating or who have dated or who have or had a
20 sexual relationship. As used in this subsection (5)(c), "dating" and
21 "dated" do not include fraternization between two individuals in a
22 business or social context;

23 (d) Adults related by blood or adoption;

24 (e) Adults who are related or were formerly related by marriage;

25 or

26 (f) Adult children of a person in a relationship that is
27 described in (a) through (e) of this subsection.

28 (6) "Harass or maliciously injure" means the civil action
29 determined to be an abusive civil action was filed with the intent to
30 or was primarily designed to:

31 (a) Exhaust, deplete, impair, or adversely impact the civil
32 action defendant's financial resources unless:

33 (i) Punitive damages are requested and appropriate; or

34 (ii) A change in the circumstances of the parties provides a good
35 faith basis to seek a change to a financial award, support, or
36 distribution of resources;

37 (b) Prevent or interfere with the ability of the civil action
38 defendant to raise a child or children for whom the civil action
39 defendant has legal custody in the manner the civil action defendant

1 deems appropriate unless the civil action plaintiff has a lawful
2 right to interfere and a good faith basis for doing so;

3 (c) Force, coerce, or attempt to force or coerce the civil action
4 defendant to agree to or make adverse concessions concerning
5 financial, custodial, support, or other issues when the issues in
6 question have been previously litigated and decided in favor of the
7 civil action defendant;

8 (d) Force, coerce, or attempt to force or coerce the civil action
9 defendant to alter, engage in, or refrain from engaging in conduct
10 when the conduct is lawful and is conduct in which the civil action
11 defendant has the right to engage in;

12 (e) Impair or attempt to impair the health or well-being of the
13 civil action defendant or a dependent of the civil action defendant;

14 (f) Prevent, interfere, or adversely impact the ability of the
15 civil action defendant to pursue or maintain a livelihood or
16 lifestyle at the same or better standard as the civil action
17 defendant enjoyed prior to the filing of the civil action primarily
18 for the purpose of harassing or maliciously injuring the civil action
19 defendant; or

20 (g) Impair, diminish, or tarnish the civil action defendant's
21 reputation in the community or alienate the civil action defendant's
22 friends, colleagues, attorneys, or professional associates by
23 subjecting parties without knowledge of or not reasonably relevant to
24 the civil action to unreasonably or unnecessarily complex, lengthy,
25 or intrusive interrogatories or depositions.

26 NEW SECTION. **Sec. 2.** This chapter applies only to a civil
27 action filed by a plaintiff against a defendant or defendants with
28 whom the plaintiff shares a civil action party relationship.

29 NEW SECTION. **Sec. 3.** (1) If a civil action is filed and the
30 defendant to the civil action believes it to be an abusive civil
31 action, the claim may be raised by the defendant:

- 32 (a) In the answer to the civil action; or
- 33 (b) By motion made at any time during the civil action.

34 (2) The court may, on its own motion, determine that a hearing
35 pursuant to section 4 of this act is necessary to determine if the
36 civil action is an abusive civil action.

1 NEW SECTION. **Sec. 4.** (1) If the defendant to a civil action
2 alleges, either by answer to the civil action or by motion made at
3 any time the civil action is pending, that the civil action
4 constitutes an abusive civil action and that the person filing the
5 civil action is an abusive civil action plaintiff, the court shall
6 conduct a hearing to determine the merits of the defendant's
7 allegations.

8 (2) At the time set for the hearing on the alleged abusive civil
9 action, the court shall hear all relevant testimony and may require
10 any affidavits, documentary evidence, or other records the court
11 deems necessary.

12 NEW SECTION. **Sec. 5.** At the hearing conducted pursuant to
13 section 4 of this act, evidence of any of the following creates a
14 rebuttable presumption that the civil action is an abusive civil
15 action and that the person filing the civil action is an abusive
16 civil action plaintiff and prefiling restrictions should be imposed
17 upon the abusive civil action plaintiff:

18 (1) The same or substantially similar issues between the same or
19 substantially similar civil action parties that are the subject of
20 the alleged abusive civil action have been litigated against the
21 civil action defendant within the past five years in another court
22 within the judicial district or another judicial district and the
23 actions were dismissed on the merits or with prejudice against the
24 civil action plaintiff;

25 (2) The alleged abusive civil action plaintiff has used the same
26 or substantially similar issues that are the subject of the current
27 civil action as the basis for an adverse complaint against the civil
28 action defendant to a regulatory or licensing board and the
29 regulatory or licensing board dismissed the complaint after a
30 contested case hearing in compliance with chapter 34.05 RCW, the
31 administrative procedure act;

32 (3) The alleged abusive civil action plaintiff has been
33 sanctioned under Rule 11 of the Washington rules of civil procedure
34 or a similar rule or law in another state or the federal government
35 for filing one or more frivolous, vexatious, or abusive civil actions
36 within the past ten years of filing the current civil action alleged
37 to be abusive and the previous frivolous, vexatious, or abusive civil
38 actions involved the same or substantially the same issues between
39 the same or substantially the same civil action parties; or

1 (4) A court of record in another judicial district has determined
2 that a civil action filed against the civil action defendant was an
3 abusive civil action and is under or has been under prefiling
4 restrictions in that judicial district.

5 NEW SECTION. **Sec. 6.** (1) If the court finds by a preponderance
6 of the evidence that a person filing a civil action is an abusive
7 civil action plaintiff, and that any or all civil actions filed by
8 the abusive civil action plaintiff against the abusive civil action
9 defendant that are pending before the court are abusive civil
10 actions, the civil actions shall be dismissed.

11 (2) In addition to dismissal of any pending abusive civil action
12 within the jurisdiction of the court, the court shall:

13 (a) Impose all costs of any abusive civil action pending in the
14 court at the time of the court's finding pursuant to subsection (1)
15 of this section against the abusive civil action plaintiff;

16 (b) Award the civil action defendant reasonable attorneys' fees
17 and all reasonable costs of defending the abusive civil action; and

18 (c) Impose prefiling restrictions upon any civil action the
19 abusive civil action plaintiff attempts to file for a period of not
20 less than forty-eight months nor more than seventy-two months.

21 (3) If a civil action defendant alleges that a claim is an
22 abusive civil action or that the plaintiff is an abusive civil action
23 plaintiff, and the court finds by a preponderance of the evidence
24 that the action was not an abusive civil action or that the plaintiff
25 is not an abusive civil action plaintiff, the court may:

26 (a) Grant to the plaintiff such remedies as may be just,
27 including granting judgment in favor of the plaintiff, granting
28 partial judgment in favor of the plaintiff, or allowing factual
29 interpretations in favor of the plaintiff;

30 (b) Tax all costs related to litigating the issue of whether the
31 civil action is an abusive civil action or whether the plaintiff is
32 an abusive civil action plaintiff, against the civil action defendant
33 who made the claim; and

34 (c) Award the civil action plaintiff reasonable attorneys' fees
35 and all reasonable costs of defending the claim that the civil action
36 was an abusive civil action or that the plaintiff was an abusive
37 civil action plaintiff.

1 NEW SECTION. **Sec. 7.** (1) Except as provided in this section, a
2 person whom a court of record has determined to be an abusive civil
3 action plaintiff and against whom prefiling restrictions have been
4 imposed is prohibited from instituting a civil action against the
5 abusive civil action defendant for the period of time the prefiling
6 restrictions are in effect, or from continuing a civil action that
7 was instituted against the same civil action defendant prior to the
8 date the person was determined to be an abusive civil action
9 plaintiff.

10 (2) Notwithstanding subsection (1) of this section and consistent
11 with the Washington state Constitution, an abusive civil action
12 plaintiff against whom prefiling restrictions have been imposed may
13 seek permission to file a civil action using the procedure set out in
14 subsection (3) of this section.

15 (3)(a) An abusive civil action plaintiff against whom prefiling
16 restrictions have been imposed pursuant to this chapter who wishes to
17 institute a civil action in a court of record during the time the
18 abusive civil action plaintiff is under filing restrictions must
19 first appear before the judge who imposed the prefiling restrictions
20 to make application for permission to institute the civil action.

21 (b)(i) The judge may examine witnesses, including the abusive
22 civil action plaintiff and the civil action defendant, to determine
23 if the proposed civil action is or is not an abusive civil action and
24 if there are reasonable and legitimate grounds upon which the
25 complaint is based.

26 (ii) There is a rebuttable presumption that any proposed civil
27 action is an abusive civil action if any of the defendants in the
28 proposed civil action were civil action defendants in one or more of
29 the civil actions that were the basis for the person being declared
30 an abusive civil action plaintiff.

31 (c)(i) If the judge who imposed the prefiling restrictions
32 believes that the civil action the abusive civil action plaintiff is
33 making application to file will be an abusive civil action, the
34 application shall be denied and the judge shall determine a time when
35 the person may next make application to file a civil action.

36 (ii) If the judge reasonably believes that the civil action that
37 the abusive civil action plaintiff is making application to file will
38 not be an abusive civil action, the judge may grant the application
39 and issue an order permitting the filing of the civil action. The
40 order shall be attached to the front of the complaint when the

1 abusive civil action plaintiff files the civil action with the clerk.
2 The defendant to the civil action shall be served with a copy of the
3 order at the same time the complaint is served.

4 (d) The findings of the judge shall be reduced to writing and
5 made a part of record in the matter. If the abusive civil action
6 plaintiff disputes the finding of the judge, the abusive civil action
7 plaintiff may appeal to the presiding judge of the judicial district
8 of the sanctioning judge. If the sanctioning judge is the presiding
9 judge, the presiding judge shall randomly select two other judges of
10 courts of record in the judicial district to review the findings of
11 the sanctioning judge. If there are not two other judges in the
12 judicial district available, the presiding judge may select a judge
13 from an adjoining judicial district to review the findings. If the
14 presiding judge or both reviewing other judges believe that the civil
15 action the person is making application to file is not an abusive
16 civil action, the findings of the sanctioning judge are overruled and
17 both judges shall sign an order permitting the filing of the civil
18 action. The order shall be entered and attached to the complaint and
19 the defendant shall be served with a copy of the order at the same
20 time the complaint is served.

21 (4) If the application for the filing of a civil action is
22 granted pursuant to this section, the period of time commencing with
23 the filing of the application requesting permission to file the civil
24 action and ending with the issuance of an order permitting filing of
25 the civil action shall not be computed as a part of an applicable
26 period of limitations within which the civil action must be
27 instituted.

28 (5) If after an abusive civil action plaintiff has made
29 application and been granted permission to file a civil action
30 pursuant to this section, the judge with jurisdiction over the civil
31 action determines that the person is attempting to add parties, amend
32 the complaint, or is otherwise attempting to alter the parties and
33 issues involved in the civil action in a manner that the judge
34 reasonably believes would make the civil action an abusive civil
35 action, the judge may order a continuance or nonsuit of the civil
36 action and return it to the presiding judge for further disposition.

37 (6) (a) If a civil action defendant is served with a complaint
38 from an abusive civil action plaintiff who filed a civil action in a
39 judicial district in which the person has not been determined to be
40 an abusive civil action plaintiff, and the complaint does not have an

1 attached order from the judge who imposed the prefiling restrictions,
2 the civil action defendant may obtain a certified copy of the order
3 finding the person to be an abusive civil action plaintiff in another
4 jurisdiction and send it to the judge where the new civil action was
5 filed and the judge who imposed the prefiling restrictions.

6 (b) If it is brought to the attention of the court, or on the
7 court's own motion, that a person against whom prefiling restrictions
8 have been imposed has filed a civil action or continued a legal
9 proceeding in the sanctioning judge's judicial district, or in
10 another judicial district, without application to do so being granted
11 by the sanctioning judge pursuant to this section, or the abusive
12 civil action plaintiff has attempted to file an action through
13 another party, the court in which the civil action is pending shall
14 dismiss the civil action or revoke the continuance. The sanctioning
15 judge may take whatever action against the abusive civil action
16 plaintiff deemed necessary for a violation of the court's order.

17 (c) If an abusive civil action plaintiff against whom prefiling
18 restrictions have been imposed files a civil action and the order
19 granting permission to file the civil action is not attached to the
20 complaint or served on the defendant, the defendant is under no
21 obligation or duty to respond to the complaint, answer
22 interrogatories, appear for depositions, or perform any other
23 responsive action required by rule or statute in a civil action.

24 (7) If the judge who imposed the prefiling restrictions is no
25 longer serving in the same capacity in the same judicial district
26 where the restrictions were placed, any other judge in that judicial
27 district may perform the review required and permitted by this
28 section.

29 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act
30 constitute a new chapter in Title 2 RCW.

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