

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 795

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

Sponsors: Representatives Turner and White (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

May 4, 2021

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



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

23 **"§ 1H-4. Hearing procedures.**

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

43 **"§ 1H-5. Burden of proof; dismissal or denial of abusive litigation; entry of order**  
44 **restricting abusive litigation.**

- 45 (a) If the court finds by a preponderance of the evidence that any or all of the litigation  
46 pending before the court constitutes abusive litigation, the abusive litigation shall be dismissed,  
47 denied, stricken, or resolved by other disposition with prejudice.
- 48 (b) In addition, if the court finds abusive litigation, the court shall enter an order  
49 prohibiting abusive litigation, which shall do each of the following:
- 50 (1) Impose all costs of any abusive litigation against the filing party.

1           (2)     Award the opposing party reasonable attorneys' fees and costs of responding  
2           to the abusive litigation, including the cost of seeking the order restricting  
3           abusive litigation.

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

7     **"§ 1H-6. Proceeding when abusive litigation is not present.**

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

11     **"§ 1H-7. Filing of new case or motion by person subject to order restricting abusive**  
12          **litigation; requirements and procedures.**

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

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

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

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

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

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

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

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

49          (f)     If a restricted person's application for permission to file proposed litigation is granted  
50          under this section, the period of time commencing with the filing of the application and ending

1 with the issuance of an order permitting the litigation to proceed shall not be computed as a part  
2 of any applicable period of limitations within which the matter must be instituted.

3 (g) If, after an application to proceed with litigation has been granted under this section,  
4 a judicial official presiding over any part of the litigation determines that the restricted person is  
5 attempting to add parties to the litigation, amend the litigation, or otherwise alter the parties or  
6 issues involved in the litigation in a manner that the judicial official finds would constitute  
7 abusive litigation under this Chapter, the judicial official shall stay the proceedings and refer the  
8 litigation to the judicial official who granted the application to proceed with litigation.

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

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

23 **"§ 1H-8. Appeals.**

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

25 **"§ 1H-9. Court authority.**

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

28 **"§ 1H-10. Nonexclusive remedy.**

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

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