



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Aida S. Montano

### **H.B. 724**

132nd General Assembly  
(As Introduced)

**Reps.** Pelanda, Duffey, Antonio, Rogers

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## **BILL SUMMARY**

### **Determination of whether filed civil action is abusive civil action**

- Permits a defendant in a civil action who believes it to be an abusive civil action to raise that allegation in its answer to the complaint or permits the court on its own motion to decide that a hearing is necessary to determine whether the action is an abusive civil action.
- Requires the court to conduct a hearing to determine the merits of the defendant's allegations.
- Specifies that evidence of circumstances dealing with certain issues between the parties creates a rebuttable presumption that the action is an abusive civil action and that prefiling restrictions should be imposed on the abusive civil action plaintiff.
- Requires the court to dismiss the action without prejudice on finding it to be an abusive civil action by a preponderance of the evidence, to order the plaintiff to pay court costs, expenses, and reasonable attorney's fees, and to impose prefiling restrictions on an action the plaintiff attempts to file within a specified period.
- Authorizes the court to grant a plaintiff just remedies on its finding by a preponderance of the evidence that the plaintiff is not an abusive civil action plaintiff and to order the defendant to pay court costs, expenses, and reasonable attorney's fees.

## **Prohibition against filing action by abusive civil action plaintiff; permission to file action**

- With the exception described in the following dot point, prohibits a person whom a court has determined to be an abusive civil action plaintiff and against whom pre-filing restrictions have been imposed from instituting a civil action in that court against the original defendant for the period the restrictions are in effect.
- Permits the abusive civil action plaintiff to appear before the judge who imposed the pre-filing restrictions to seek permission to file an action against the original defendant and authorizes the judge to examine witnesses, the plaintiff, and the original defendant.
- Specifies that there is a rebuttable presumption that a proposed action is an abusive civil action if any defendant in the proposed action was a defendant in an action that was the basis for the person being declared an abusive civil action plaintiff.
- Requires the judge who believes that the proposed action would be an abusive civil action to deny the application and determine a time when the person may next apply for permission to file an action, and permits the judge to grant the application upon the judge's reasonable belief that it would not be an abusive civil action.
- Provides that a judge's decision on an application for permission to file such civil action is a final appealable order.
- Provides that if a court order granting permission for an abusive civil action plaintiff to file an action against the original defendant is not attached to the complaint or served on the defendant, the defendant is not obligated to respond to the complaint, appear for depositions, or take any responsive action otherwise required.
- Permits a defendant to obtain a certified copy of a court order of pre-filing restrictions and send it to the court in which the action is pending if the action was filed in that court and not the court that imposed the restrictions.
- Allows the judge presiding over the action that the abusive civil action plaintiff was permitted to file, to deny the plaintiff's motion to add parties, amend the complaint, or otherwise alter the parties and issues involved in a manner that would make the action an abusive civil action.
- Requires a court to dismiss legal proceedings instituted by an abusive civil action plaintiff against the original defendant without court permission.

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## CONTENT AND OPERATION

### Determination of whether filed civil action is abusive civil action

The bill provides that if a civil action is filed and the defendant believes it to be an "abusive civil action," the defendant may raise that allegation in answer to the complaint or the court may decide on its own motion that a hearing is necessary to determine whether the action is an abusive civil action.<sup>1</sup> (See "**Definitions**" for terms in quotation marks.) If the defendant alleges the action as an abusive civil action, or upon the court's own motion, the court must conduct a hearing to determine the allegations' merits. The court must hear all relevant testimony and may require affidavits, documentary evidence, or other records it considers necessary.<sup>2</sup>

### Rebuttable presumptions for an abusive civil action

Under the bill, evidence of any of the following creates a rebuttable presumption that the action is an abusive civil action and that prefiling restrictions should be imposed on the "abusive civil action plaintiff" (hereafter abusive plaintiff):<sup>3</sup>

- The same or substantially similar issues between the same parties as in the alleged abusive civil action have been litigated within the past five years in another court and the actions were dismissed on the merits or with prejudice against the plaintiff.
- The plaintiff used the same or substantially similar issues that are the subject of the current action as the basis for a complaint against the defendant to a regulatory or licensing board and the board dismissed the complaint after an administrative hearing.
- The plaintiff has been sanctioned under Civil Rule 11 (signing of pleadings, motions, or other documents), R.C. 2323.51 (frivolous conduct in filing civil claims) or R.C. 2323.52 (civil action to declare a person vexatious litigator), a similar rule of law in another state, or federal law for a frivolous, vexatious, or abusive civil action within ten years of filing the current action and the previous civil action involved the same or substantially the same issues between the same or substantially the same parties.

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<sup>1</sup> R.C. 2323.541(A).

<sup>2</sup> R.C. 2323.541(B)(1).

<sup>3</sup> R.C. 2323.541(B)(2).



- A court of record in another jurisdiction has determined that the plaintiff is an abusive plaintiff and is or has been under prefiling restrictions in that jurisdiction.

### **Court's determination; burden of proof**

If a court finds by a preponderance of the evidence that a person filing a civil action is an abusive plaintiff and that the pending case is an abusive civil action, the action must be dismissed with prejudice. The court must do all of the following:<sup>4</sup>

- Order the plaintiff to pay court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the action;
- Impose prefiling restrictions upon any civil action the plaintiff attempts to file against the defendant in that court for at least four years and not more than six years.

If a defendant alleges that a plaintiff is an abusive plaintiff and the court finds by a preponderance of the evidence that the plaintiff is not, the court may grant to the plaintiff remedies as may be just, including final or partial judgment, or factual interpretations, in favor of the plaintiff. That defendant may be ordered to pay court costs, reasonable attorney's fees, and other reasonable expenses incurred by the plaintiff in litigating the issue.<sup>5</sup>

### **Prohibition against filing action by abusive plaintiff**

The bill generally prohibits a person whom a court of record has determined to be an abusive plaintiff and against whom prefiling restrictions have been imposed from instituting or continuing a civil action in that court against the original defendant or defendants for the period the restrictions are in effect.<sup>6</sup>

### **Exception to prohibition – abusive plaintiff seeks court permission**

Notwithstanding the above prohibition, such an abusive plaintiff may appear before the judge who imposed the prefiling restrictions and seek permission to file a civil action against the original defendant or defendants. The judge may examine witnesses, the abusive plaintiff, and the original defendant or defendants, to determine whether the proposed action is an abusive civil action or whether there are reasonable

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<sup>4</sup> R.C. 2323.541(C).

<sup>5</sup> R.C. 2323.541(D).

<sup>6</sup> R.C. 2323.542(A).

and legitimate grounds for filing the action. There is a rebuttable presumption that any proposed civil action is an abusive civil action if any defendant in the proposed action was a defendant in an action that was the basis for the person being declared an abusive plaintiff.<sup>7</sup>

### **Judge's determination**

If the judge who imposed the prefiling restrictions believes that the proposed action would be an abusive civil action, the judge must deny the application and determine a time when the person may next apply for permission to file a civil action. If the judge reasonably believes that the proposed action would *not* be an abusive civil action, the judge may grant the application and issue an order permitting the filing of the proposed action. The order must be attached to the front of the complaint when the plaintiff files the action with the clerk. The defendant must be served with a copy of the order at the same time the complaint is served.<sup>8</sup>

If a person who has been found to be an abusive plaintiff requests permission to file a civil action against the original defendant or defendants, the period commencing with the filing of the application and ending with the issuance of an order granting or denying the application must not be computed as a part of an applicable period of limitations within which the civil action must be instituted.<sup>9</sup>

A judge's decision on an application for permission to file such a civil action and all accompanying findings must be recorded in writing on the record. The judge's decision is a final appealable order under R.C. 2505.02 (procedure on appeals), and if the application is denied, the applicant has an interlocutory right of appeal under that procedure.<sup>10</sup> An order that denies an application for permission to file such a civil action is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial.<sup>11</sup>

### **Provisions related to the grant of permission to file civil action**

Under the bill, if an abusive plaintiff files a civil action against the original defendant or defendants and the order granting permission to file the civil action is not attached to the complaint or served on a defendant, the defendant is not obligated to

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<sup>7</sup> R.C. 2323.542(B).

<sup>8</sup> R.C. 2323.542(C)(1) and (2).

<sup>9</sup> R.C. 2323.542(C)(3).

<sup>10</sup> R.C. 2323.542(D).

<sup>11</sup> R.C. 2505.02(B)(8).

respond to the complaint, answer interrogatories, appear for depositions, or take any other responsive action otherwise required by rule or statute in a civil action.<sup>12</sup>

If the original defendant or defendants are served with a complaint from an abusive plaintiff and the action is filed in a court other than the one that imposed pre-filing restrictions, and if the complaint does not have an attached order from the judge who imposed the pre-filing restrictions, the defendant may obtain a certified copy of the order and send it to the court where the action is pending for its consideration.<sup>13</sup>

If, after an abusive plaintiff has applied and been granted permission to file a civil action, the judge presiding over the action determines that the person is attempting to add parties, amend the complaint, or otherwise alter the parties and issues involved in a manner that would make the action an abusive civil action, the judge may deny such person's motion to do so.<sup>14</sup>

### **Filing abusive civil action without court permission**

The bill provides that if it appears by suggestion of the parties or otherwise that an abusive plaintiff has instituted or continued legal proceedings against the original defendant or defendants without permission as discussed above in "**Prohibition against filing action by abusive plaintiff**," the court must dismiss those proceedings.<sup>15</sup>

### **Definitions**

For purposes of the above provisions, the bill defines the following terms:<sup>16</sup>

"**Abusive civil action**" means a civil action filed against a defendant with whom the plaintiff shares a "civil action party relationship," intended primarily to "harass or maliciously injure" the defendant, to which any of the following apply:

- The claim is not warranted under existing law, or cannot be supported by a good faith argument for an extension, modification, or reversal of existing law or for the establishment of new law.
- The allegations or other factual contentions have no evidentiary support.

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<sup>12</sup> R.C. 2323.543(C).

<sup>13</sup> R.C. 2323.543(B).

<sup>14</sup> R.C. 2323.543(A)(2).

<sup>15</sup> R.C. 2323.543(A)(1).

<sup>16</sup> R.C. 2323.54.

- The issues that are the basis of the civil action have previously been litigated in one or more other courts by the same plaintiff, and the previous actions have concluded unfavorably to the plaintiff.

"**Civil action party relationship**" means any of the following categories of relationship between the plaintiff and defendant:

- They are current or former spouses.
- They live together or have lived together.
- They are adults who are or were in a "dating relationship."
- They are adults related by blood or adoption.
- They are related or were previously related by marriage.
- They are adult children of persons in a relationship described in any of the preceding dot points.

"**Dating relationship**" means a relationship between individuals who have, or have had, a relationship of a romantic or intimate nature. "Dating relationship" does not include a casual acquaintanceship or ordinary fraternization in a business or social context.<sup>17</sup>

"**Harass or maliciously injure**" means to file a civil action with the intent to do any of the following:

- Exhaust or adversely impact the defendant's assets, unless punitive damages were requested and found appropriate or a change in circumstances provides a good faith basis to seek a change to a financial award, support, or distribution of resources;
- Prevent or interfere with the defendant's ability to raise a child for whom the defendant has legal custody unless the plaintiff has a legal right and a good faith basis to interfere;
- Force or attempt to force the defendant to agree to or make adverse concessions concerning financial, custodial, support, or other issues that have been previously litigated and decided in favor of the defendant;

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<sup>17</sup> By reference to R.C. 3113.31.

- Force or attempt to force the defendant to alter, engage in, or refrain from engaging in conduct when the conduct is lawful and the defendant has a right to engage in or refrain from engaging in it;
- Impair or attempt to impair the health or well-being of the defendant or a dependent of the defendant;
- Prevent, interfere with, or adversely impact the defendant's ability to pursue or maintain a livelihood or lifestyle at the same standard or a standard better than the defendant enjoyed prior to filing the action intended to harass or maliciously injure the defendant;
- Injure the defendant's reputation in the community or alienate the defendant's friends, colleagues, attorneys, or professional associates by subjecting those parties, without knowledge of or relevance to the civil action, to unreasonably complex, lengthy, or intrusive interrogatories or depositions.

"**Abusive civil action plaintiff**" means a person who files a civil action that a court has determined to be an abusive civil action and against whom prefiling restrictions have been imposed pursuant to the bill.

"**Original defendant**" means any person against whom an abusive civil action was filed that resulted in prefiling restrictions against the plaintiff.

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## HISTORY

ACTION	DATE
Introduced	08-29-18