

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 724**

**Representative Pelanda**

**Cosponsors: Representatives Duffey, Antonio, Rogers**

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**A BILL**

To amend section 2505.02 and to enact sections 1  
2323.54, 2323.541, 2323.542, and 2323.543 of the 2  
Revised Code to restrict persons designated as 3  
abusive civil action plaintiffs from filing 4  
civil actions against certain defendants without 5  
the court's permission. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2505.02 be amended and sections 7  
2323.54, 2323.541, 2323.542, and 2323.543 of the Revised Code be 8  
enacted to read as follows: 9

**Sec. 2323.54.** As used in sections 2323.54 to 2323.543 of 10  
the Revised Code: 11

(A) "Abusive civil action" means a civil action filed 12  
against a defendant with whom the plaintiff shares a civil 13  
action party relationship, intended primarily to harass or 14  
maliciously injure the defendant, to which any of the following 15  
apply: 16

(1) The claim is not warranted under existing law, cannot 17  
be supported by a good faith argument for an extension, 18

modification, or reversal of existing law, or cannot be 19  
supported by a good faith argument for the establishment of new 20  
law. 21

(2) The allegations or other factual contentions have no 22  
evidentiary support. 23

(3) The issues that are the basis of the civil action have 24  
previously been litigated in one or more other courts by the 25  
same plaintiff, and the previous actions have concluded 26  
unfavorably to the plaintiff. 27

(B) "Civil action party relationship" means any of the 28  
following categories of relationship between the plaintiff and 29  
defendant: 30

(1) The plaintiff and defendant are current or former 31  
spouses. 32

(2) The plaintiff and defendant live together or have 33  
lived together. 34

(3) The plaintiff and defendant are adults who are or were 35  
in a dating relationship. 36

(4) The plaintiff and defendant are adults related by 37  
blood or adoption. 38

(5) The plaintiff and defendant are related or were 39  
previously related by marriage. 40

(6) The plaintiff and defendant are adult children of 41  
persons in a relationship described in divisions (B)(1) to (5) 42  
of this section. 43

(C) "Dating relationship" has the same meaning as in 44  
section 3113.31 of the Revised Code. 45

(D) "Harass or maliciously injure" means to file a civil 46  
action with the intent to do any of the following: 47

(1) Exhaust or adversely impact the defendant's assets, 48  
unless punitive damages were requested and found appropriate or 49  
a change in circumstances provides a good faith basis to seek a 50  
change to a financial award, support, or distribution of 51  
resources; 52

(2) Prevent or interfere with the ability of the defendant 53  
to raise a child for whom the defendant has legal custody unless 54  
the plaintiff has a legal right to interfere and a good faith 55  
basis for doing so; 56

(3) Force or attempt to force the defendant to agree to or 57  
make adverse concessions concerning financial, custodial, 58  
support, or other issues that have been previously litigated and 59  
decided in favor of the defendant; 60

(4) Force or attempt to force the defendant to alter, 61  
engage in, or refrain from engaging in conduct when the conduct 62  
is lawful and the defendant has a right to engage in or refrain 63  
from engaging in it; 64

(5) Impair or attempt to impair the health or well-being 65  
of the defendant or a dependent of the defendant; 66

(6) Prevent, interfere with, or adversely impact the 67  
ability of the defendant to pursue or maintain a livelihood or 68  
lifestyle at the same standard or a standard better than the 69  
defendant enjoyed prior to the filing of the action intended to 70  
harass or maliciously injure the defendant; 71

(7) Injure the defendant's reputation in the community or 72  
alienate the defendant's friends, colleagues, attorneys, or 73  
professional associates by subjecting those parties, without 74

knowledge of or relevance to the civil action, to unreasonably 75  
complex, lengthy, or intrusive interrogatories or depositions. 76

(E) "Abusive civil action plaintiff" means a person who 77  
files a civil action that a court has determined to be an 78  
abusive civil action and against whom prefiling restrictions 79  
have been imposed pursuant to sections 2323.54 to 2323.543 of 80  
the Revised Code. 81

(F) "Original defendant" means any person against whom an 82  
abusive civil action was filed that resulted in prefiling 83  
restrictions against the plaintiff. 84

**Sec. 2323.541.** (A) If a civil action is filed and the 85  
defendant believes it to be an abusive civil action, the 86  
defendant may raise the allegation in answer to the complaint or 87  
the court may decide on its own motion that a hearing is 88  
necessary to determine whether the civil action is an abusive 89  
civil action. 90

(B) (1) If the defendant to a civil action alleges that the 91  
action constitutes an abusive civil action, or upon the court's 92  
own motion, the court shall conduct a hearing to determine the 93  
merits of the allegation. At the hearing, the court shall hear 94  
all relevant testimony and may require any affidavits, 95  
documentary evidence, or other records the court considers 96  
necessary. 97

(2) Evidence of any of the following creates a rebuttable 98  
presumption that the civil action is an abusive civil action and 99  
that prefiling restrictions should be imposed upon the abusive 100  
civil action plaintiff: 101

(a) The same or substantially similar issues between the 102  
same parties as in the alleged abusive civil action have been 103

litigated within the past five years in another court and the 104  
actions were dismissed on the merits or with prejudice against 105  
the plaintiff. 106

(b) The plaintiff used the same or substantially similar 107  
issues that are the subject of the current civil action as the 108  
basis for a complaint against the defendant to a regulatory or 109  
licensing board and the board dismissed the complaint after an 110  
administrative hearing. 111

(c) The plaintiff has been sanctioned under Rule 11 of the 112  
Ohio Rules of Civil Procedure, section 2323.51 or 2323.52 of the 113  
Revised Code, a similar rule of law in another state, or federal 114  
law for a frivolous, vexatious, or abusive civil action within 115  
ten years of filing the current civil action and the previous 116  
civil action involved the same or substantially the same issues 117  
between the same or substantially the same parties. 118

(d) A court of record in another jurisdiction has 119  
determined that the plaintiff is an abusive civil action 120  
plaintiff and the plaintiff is or has been under prefiling 121  
restrictions in that jurisdiction. 122

(C) If a court finds by a preponderance of the evidence 123  
that a person filing a civil action is an abusive civil action 124  
plaintiff and that the case pending before the court is an 125  
abusive civil action, the action shall be dismissed with 126  
prejudice. In addition, the court shall do all of the following: 127

(1) Order the plaintiff to pay court costs, reasonable 128  
attorney's fees, and other reasonable expenses incurred in 129  
connection with the civil action; 130

(2) Impose prefiling restrictions upon any civil action 131  
the plaintiff attempts to file against the defendant in that 132

court for a period of at least four years and not more than six 133  
years. 134

(D) If a defendant alleges that a plaintiff is an abusive 135  
civil action plaintiff and the court finds by a preponderance of 136  
the evidence that the plaintiff is not, the court may grant to 137  
the plaintiff such remedies as may be just, including final 138  
judgment or partial judgment in favor of the plaintiff or 139  
factual interpretations in favor of the plaintiff. The defendant 140  
who raised the allegation may be ordered to pay court costs, 141  
reasonable attorney's fees, and other reasonable expenses 142  
incurred by the plaintiff in litigating the issue. 143

**Sec. 2323.542.** (A) Except as provided in division (B) of 144  
this section, a person whom a court of record has determined to 145  
be an abusive civil action plaintiff under section 2323.541 of 146  
the Revised Code and against whom prefiling restrictions have 147  
been imposed is prohibited from instituting or continuing a 148  
civil action in that court against the original defendant or 149  
defendants for the period of time the restrictions are in 150  
effect. 151

(B) (1) Notwithstanding division (A) of this section, an 152  
abusive civil action plaintiff against whom prefiling 153  
restrictions are in effect may appear before the judge who 154  
imposed the restrictions and seek permission to file a civil 155  
action against the original defendant or defendants. The judge 156  
may examine witnesses, including the abusive civil action 157  
plaintiff and the original defendant or defendants, to determine 158  
whether the proposed civil action is an abusive civil action or 159  
whether there are reasonable and legitimate grounds for filing 160  
the civil action. 161

(2) There is a rebuttable presumption that any proposed 162

civil action is an abusive civil action if any defendant in the 163  
proposed civil action was a defendant in an action that was the 164  
basis for the person being declared an abusive civil action 165  
plaintiff. 166

(C) (1) If the judge who imposed the prefiling restrictions 167  
believes that the proposed civil action would be an abusive 168  
civil action, the judge shall deny the application and determine 169  
a time when the person may next apply for permission to file a 170  
civil action. 171

(2) If the judge reasonably believes that the proposed 172  
civil action would not be an abusive civil action, the judge may 173  
grant the application and issue an order permitting the filing 174  
of the proposed civil action. The order shall be attached to the 175  
front of the complaint when the plaintiff files the civil action 176  
with the clerk. The defendant to the action shall be served with 177  
a copy of the order at the same time the complaint is served. 178

(3) If a person who has been found to be an abusive civil 179  
action plaintiff requests permission under this section to file 180  
a civil action against the original defendant or defendants, the 181  
period of time commencing with the filing of the application and 182  
ending with the issuance of an order granting or denying the 183  
application shall not be computed as a part of an applicable 184  
period of limitations within which the civil action must be 185  
instituted. 186

(D) A judge's decision on an application for permission to 187  
file a civil action under this section and all accompanying 188  
findings shall be recorded in writing on the record. The judge's 189  
decision is a final order under section 2505.02 of the Revised 190  
Code, and if the application is denied, the applicant has an 191  
interlocutory right of appeal under that section. 192

Sec. 2323.543. (A) (1) Whenever it appears by suggestion of 193  
the parties or otherwise that an abusive civil action plaintiff 194  
has instituted or continued legal proceedings against the 195  
original defendant or defendants without permission under 196  
section 2323.542 of the Revised Code, the court shall dismiss 197  
the proceedings instituted by the abusive civil action 198  
plaintiff. 199

(2) If, after an abusive civil action plaintiff has 200  
applied and been granted permission to file a civil action, the 201  
judge presiding over the action determines that the person is 202  
attempting to add parties, amend the complaint, or otherwise 203  
alter the parties and issues involved in a manner that would 204  
make the action an abusive civil action, the judge may deny the 205  
motion to add parties, amend the complaint, or otherwise alter 206  
the parties and issues involved in the proceeding. 207

(B) If the original defendant or defendants are served 208  
with a complaint from an abusive civil action plaintiff and the 209  
action is filed in a court other than the one that imposed 210  
prefiling restrictions, and if the complaint does not have an 211  
attached order from the judge who imposed the prefiling 212  
restrictions, the defendant may obtain a certified copy of the 213  
order and send it to the court where the civil action is pending 214  
for its consideration. 215

(C) If an abusive civil action plaintiff files a civil 216  
action against the original defendant or defendants and the 217  
order granting permission to file the civil action is not 218  
attached to the complaint or served on a defendant, the 219  
defendant is under no obligation to respond to the complaint, 220  
answer interrogatories, appear for depositions, or take any 221  
other responsive action otherwise required by rule or statute in 222



<u>a civil action.</u>	223
<b>Sec. 2505.02.</b> (A) As used in this section:	224
(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.	225 226 227 228
(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.	229 230 231
(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.	232 233 234 235 236 237 238 239
(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:	240 241 242
(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;	243 244
(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;	245 246 247
(3) An order that vacates or sets aside a judgment or grants a new trial;	248 249
(4) An order that grants or denies a provisional remedy	250

and to which both of the following apply:	251
(a) The order in effect determines the action with respect	252
to the provisional remedy and prevents a judgment in the action	253
in favor of the appealing party with respect to the provisional	254
remedy.	255
(b) The appealing party would not be afforded a meaningful	256
or effective remedy by an appeal following final judgment as to	257
all proceedings, issues, claims, and parties in the action.	258
(5) An order that determines that an action may or may not	259
be maintained as a class action;	260
(6) An order determining the constitutionality of any	261
changes to the Revised Code made by Am. Sub. S.B. 281 of the	262
124th general assembly, including the amendment of sections	263
1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54,	264
2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43,	265
2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as	266
5164.07 by H.B. 59 of the 130th general assembly), and the	267
enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of	268
the Revised Code or any changes made by Sub. S.B. 80 of the	269
125th general assembly, including the amendment of sections	270
2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the	271
Revised Code;	272
(7) An order in an appropriation proceeding that may be	273
appealed pursuant to division (B) (3) of section 163.09 of the	274
Revised Code;	275
<u>(8) An order that denies an application for permission to</u>	276
<u>file a civil action under section 2323.542 of the Revised Code.</u>	277
(C) When a court issues an order that vacates or sets	278
aside a judgment or grants a new trial, the court, upon the	279

request of either party, shall state in the order the grounds 280  
upon which the new trial is granted or the judgment vacated or 281  
set aside. 282

(D) This section applies to and governs any action, 283  
including an appeal, that is pending in any court on July 22, 284  
1998, and all claims filed or actions commenced on or after July 285  
22, 1998, notwithstanding any provision of any prior statute or 286  
rule of law of this state. 287

**Section 2.** That existing section 2505.02 of the Revised 288  
Code is hereby repealed. 289