

HOUSE No. 4149

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Blais

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting survivors of domestic abuse from abusive litigation.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|--------------------------------------|------------------|
| <i>Natalie M. Blais</i> | <i>1st Franklin</i> | <i>2/19/2021</i> |
| <i>Mindy Domb</i> | <i>3rd Hampshire</i> | <i>2/24/2021</i> |
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>2/25/2021</i> |
| <i>Kate Lipper-Garabedian</i> | <i>32nd Middlesex</i> | <i>2/26/2021</i> |
| <i>Christina A. Minicucci</i> | <i>14th Essex</i> | <i>2/26/2021</i> |
| <i>Carlos González</i> | <i>10th Hampden</i> | <i>2/26/2021</i> |
| <i>Patrick Joseph Kearney</i> | <i>4th Plymouth</i> | <i>2/26/2021</i> |
| <i>James K. Hawkins</i> | <i>2nd Bristol</i> | <i>2/26/2021</i> |
| <i>Vanna Howard</i> | <i>17th Middlesex</i> | <i>2/26/2021</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> | <i>2/26/2021</i> |
| <i>Danillo A. Sena</i> | <i>37th Middlesex</i> | <i>3/8/2021</i> |
| <i>Walter F. Timilty</i> | <i>Norfolk, Bristol and Plymouth</i> | <i>3/17/2021</i> |
| <i>Natalie M. Higgins</i> | <i>4th Worcester</i> | <i>9/3/2021</i> |
| <i>Jon Santiago</i> | <i>9th Suffolk</i> | <i>9/20/2021</i> |
| <i>Steven G. Xiarhos</i> | <i>5th Barnstable</i> | <i>9/20/2021</i> |
| <i>Tram T. Nguyen</i> | <i>18th Essex</i> | <i>9/21/2021</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>9/22/2021</i> |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> | <i>10/1/2021</i> |

| | | |
|------------------------|-----------------------|-------------------|
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> | <i>10/18/2021</i> |
| <i>Brian W. Murray</i> | <i>10th Worcester</i> | <i>10/20/2021</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>11/23/2021</i> |

HOUSE No. 4149

By Ms. Blais of Sunderland, a petition (accompanied by bill, House, No. 4149) of Natalie M. Blais and others relative to protecting survivors of domestic abuse from certain litigation. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act protecting survivors of domestic abuse from abusive litigation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 209D the following
2 chapter:-

3 Chapter 209E.

4 ABUSIVE LITIGATION PREVENTION

5 Section 1. As used in this chapter, the following words shall, unless the context clearly
6 requires otherwise, have the following meanings:

7 “Abuse”, as defined in section 1 of chapter 209A.

8 "Abusive litigation", litigation where the following apply:

9 (a)(i) The opposing parties have a current or former family or household member
10 relationship;

11 (ii) The party who is filing, initiating, advancing or continuing the litigation has been
12 found by a court to have committed abuse against the other party pursuant to an order entered
13 under chapters 208, 209, 209A, 209C or 258E, or who is found after a hearing in the instant case,
14 to have committed abuse or harassment against the other party that may have warranted the issue
15 of an order under said chapters and

16 (iii) The litigation is being initiated, advanced or continued primarily for the purpose of
17 abusing, harassing, intimidating, threatening or maintaining contact with the other party; and

18 (b) At least 1 of the following factors apply:

19 (i) Claims, allegations or other legal contentions made in the litigation are not warranted
20 by existing law or by a reasonable argument for the extension, modification or reversal of
21 existing law, or the establishment of new law;

22 (ii) Allegations and other factual contentions made in the litigation are without the
23 existence of evidentiary support; or

24 (iii) An issue or issues that are the basis of the litigation have previously been filed in 1 or
25 more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably
26 to the party filing, initiating, advancing or continuing the litigation.

27 "Family or household members", as defined section 1 of chapter 209A

28 "Harassment", as defined in section 1 of chapter 258E.

29 "Litigation", any kind of legal action or proceeding including, but not limited to:

30 (i) filing a summons, complaint, demand or petition;

31 (ii) serving a summons, complaint, demand or petition, regardless of whether it has been
32 filed;

33 (iii) filing a motion, notice of court date, note for motion docket or order to appear;

34 (iv) serving a motion, notice of court date or order to appear, regardless of whether it has
35 been filed or scheduled;

36 (v) filing a subpoena, subpoena duces tecum, request for interrogatories, request for
37 production, notice of deposition or other discovery request; or

38 (vi) serving a subpoena, subpoena duces tecum, request for interrogatories, request for
39 production, notice of deposition or other discovery request.

40 "Perpetrator of abusive litigation", a person who files, initiates, advances or continues
41 litigation in violation of an order restricting abusive litigation.

42 Section 2. (1) A party to a case may request from the court an order restricting abusive
43 litigation if the parties are current or former family or household members and one party has
44 been found by the court to have committed abuse or harassment against the other party. The
45 request may be made in any form, including, but not limited to:

46 (a) in any answer or response to the litigation being filed, initiated, advanced or
47 continued;

48 (b) by motion made at any time during any open or ongoing case;

49 (c) in an answer or response to any motion or request for an order; or

50 (d) orally in any hearing.

51 (2) Any court of competent jurisdiction may, on its own motion, determine that a hearing
52 pursuant to section 3 is necessary to determine if a party is engaging in abusive litigation.

53 (3) The chief justice of the trial court shall create forms for the motion for order
54 restricting abusive litigation and order restricting abusive litigation.

55 (4) No filing fee shall be charged to the unrestricted party for proceedings pursuant to this
56 section regardless of whether it is filed pursuant to this chapter.

57 (5) The provisions of this section are nonexclusive and shall not affect any other remedy
58 available.

59 Section 3. (1) If a party asserts that they are being subjected to abusive litigation, the
60 court shall attempt to verify: (i) that the parties are or previously were family or household
61 members; and (ii) that the party raising the claim of abusive litigation has been found to
62 be a victim of abuse or harassment by the other party or finds, after a hearing in the instant case,
63 that said party has been a victim of abuse or harassment. If the court verifies that both elements
64 are true or is unable to verify that they are not true, the court shall set a hearing to determine
65 whether the litigation meets the definition of abusive litigation.

66 (2) At the time set for the hearing on the alleged abusive litigation, the court shall hear all
67 relevant testimony and may require any affidavits, documentary evidence or other records the
68 court deems necessary.

69 Section 4. Evidence of any of the following presented at a hearing conducted pursuant to
70 section 3 shall create a rebuttable presumption that litigation is being initiated, advanced or

71 continued primarily for the purpose of harassing, intimidating or maintaining contact with the
72 other party.

73 (1) The same or substantially similar issues between the same or substantially similar
74 parties have been litigated within the past 5 years in the same court or any other court of
75 competent jurisdiction;

76 (2) The same or substantially similar issues between the same or substantially similar
77 parties have been raised, pled or alleged in the past 5 years and were dismissed on the merits or
78 with prejudice;

79 (3) Within the last 10 years, the party allegedly engaging in abusive litigation has been
80 sanctioned in 1 or more cases, petitions, motions or other filings that were found to have
81 constituted abusive litigation, been found not to be supported by good grounds, interposed for the
82 delay or found to be frivolous or brought in bad faith involving the same opposing party; or

83 (4) A court of record in another judicial district has determined that the party allegedly
84 engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and
85 has been subject to a court order imposing prefiling restrictions.

86 Section 5. (1) If the court finds by a preponderance of the evidence that a party is
87 engaging in abusive litigation and that any or all of the motions or actions pending before the
88 court are abusive litigation, the litigation shall be dismissed, denied, stricken or resolved by other
89 disposition with prejudice.

90 (2) In addition to dismissal or denial of any pending abusive litigation within the
91 jurisdiction of the court, the court shall enter an order restricting abusive litigation. The order
92 shall:

93 (a) impose all costs of any abusive civil action pending in the court at the time of the
94 court's finding pursuant to subsection (1) against the party advancing the abusive litigation,
95 including, but not limited to, court costs, lost wages, transportation costs and costs of child care
96 related to said civil action including trips to court to review files, files pleadings and appear for
97 any type of hearing;

98 (b) award the other party reasonable attorneys' fees and costs of responding to the abusive
99 litigation including the cost of seeking the order restricting abusive litigation; and

100 (c) identify the party protected by the order and impose prefiling restrictions upon the
101 party found to have engaged in abusive litigation for a period of not less than 48 months nor
102 more than 72 months.

103 (3) If the court finds by a preponderance of the evidence that the litigation does not
104 constitute abusive litigation, the court shall enter written findings and the litigation shall proceed.
105 Nothing in this section or chapter shall be construed as limiting the court's inherent authority to
106 control the proceedings and litigants before it.

107 4) The provisions of this section are nonexclusive and shall not affect any other remedy
108 available to the person who is protected by the order restricting abusive litigation or to the court.

109 Section 7. (1) Except as provided for in this section, a person who is subject to an order
110 restricting abusive litigation is prohibited from filing, initiating, advancing or continuing any
111 litigation against the protected party for the period of time filing restrictions are in effect.

112 (2)(a) A person who is subject to an order restricting abusive litigation and against whom
113 prefiling restrictions have been imposed pursuant to section 5 who wishes to initiate a new case
114 or file a motion in an existing case during the time the person is under filing restrictions shall
115 first appear before the judge who imposed the prefiling restrictions or in front of any person
116 designated by the judge to act in this capacity to make application for permission to institute the
117 civil action.

118 (b)(i) The judge or a designee may examine witnesses, court records and any other
119 available evidence to determine if the proposed litigation is abusive litigation or if there are
120 reasonable and legitimate grounds upon which the litigation is based.

121 (ii) If, based on reviewing the records as well as any evidence from the person who is
122 subject to the order, the judge or designee determines the proposed litigation is abusive litigation,
123 it shall not be necessary for the person protected by the order to appear or participate in the
124 proposed litigation in any way. If the judge or designee is unable to determine whether the
125 proposed litigation is abusive without hearing from the person protected by the order, then the
126 court shall issue an order scheduling a hearing and notifying the protected party of the party's
127 right to appear and/or participate in the hearing. The order shall specify whether the protected
128 party is expected to submit a written response. When possible, the protected party shall be
129 permitted to appear virtually and provided with instructions for how to appear virtually.

130 (c)(i) If the judge or designee believes the litigation that the party who is subject to the
131 order restricting abusive litigation is making application to file will constitute abusive litigation,
132 the application shall be denied, dismissed or otherwise disposed with prejudice.

133 (ii) If the judge reasonably believes that the litigation the party who is subject to the order
134 restricting abusive litigation is making application to file will not be abusive litigation, the judge
135 or

136 designee may grant the application and issue an order permitting the filing of the case,
137 motion or pleading. The party who is protected by the order shall be served with a copy of the
138 order at the same time as the underlying pleading.

139 (d) The findings of the judge or designee shall be in writing and made a part of the record
140 in the matter. If the party who is subject to the order restricting abusive litigation disputes the
141 finding of a designee, the party may seek review by the judge. If the party disputes the finding of
142 the judge, the party may seek review of the decision as provided by the applicable court rules.

143 (3) If the application for the filing of a pleading is granted pursuant to this section, the
144 period of time commencing with the filing of the application requesting permission to file the
145 action and ending with the issuance of an order permitting filing of the action shall not be
146 computed as a part of any applicable period of limitations within which the matter must be
147 instituted.

148 (4) If, after a party who is subject to an order restricting abusive litigation and pre-filing
149 restrictions has made application and been granted permission to file or advance a case pursuant
150 to this section, any judge hearing or presiding over the case, or any part thereof, determines that
151 the person is attempting to add parties, amend the complaint or is otherwise attempting to alter

152 the parties and issues involved in the litigation in a manner that the judge reasonably believes
153 would constitute abusive litigation, the judge shall stay the proceedings and refer the case back to
154 the judge or designee who granted the application to file, for further disposition.

155 (5)(a) If a party who is protected by an order restricting abusive litigation is served with a
156 pleading filed by the person who is subject to the order restricting abusive litigation, and the
157 pleading does not have an attached order allowing the pleading, the protected party may respond
158 to the case by filing a copy of the order restricting abusive litigation.

159 (b) If it is brought to the attention of the court that a person subject to an order restricting
160 abusive litigation and against whom prefiling restrictions have been imposed has filed a new case
161 or is continuing an existing case without having been granted permission pursuant to this section,
162 the court shall dismiss, deny or otherwise dispose of the matter. The court make take this action
163 on its own motion or initiative. The court may take whatever action against the perpetrator of
164 abusive litigation deemed necessary and appropriate for a violation of the order restricting
165 abusive litigation.

166 (c) If a party who is protected by an order restricting abusive litigation is served with a
167 pleading filed by the person who is subject to the order restricting abusive litigation, and the
168 pleading does not have an attached order allowing the pleading, the protected party is under no
169 obligation or duty to respond to the summons, complaint, petition, motion, answer
170 interrogatories, appear for depositions or any other responsive action required by rule or statute
171 in a civil action.

172 (6) If the judge or designee who imposed the prefiling restrictions is no longer serving in
173 the same capacity in the same judicial district where the restrictions were placed, or is otherwise

174 unavailable for any reason, any other judicial officer in that judicial district may perform the
175 review required and permitted by this section.