

SENATE No. 1079**The Commonwealth of Massachusetts**

PRESENTED BY:

Michael O. Moore

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 relative to controlling and abusive litigation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/8/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Plymouth and Bristol</i>	<i>2/13/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/13/2023</i>
<i>Anne M. Gobi</i>	<i>Worcester and Hampshire</i>	<i>2/22/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/28/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/2/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/21/2023</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/30/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>5/8/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>5/30/2023</i>
<i>John C. Velis</i>	<i>Hampden and Hampshire</i>	<i>6/21/2023</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>6/27/2023</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>7/12/2023</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>7/13/2023</i>
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>7/24/2023</i>

<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>7/26/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>8/30/2023</i>
<i>Liz Miranda</i>	<i>Second Suffolk</i>	<i>9/19/2023</i>
<i>Robyn K. Kennedy</i>	<i>First Worcester</i>	<i>12/11/2023</i>
<i>Pavel Payano</i>	<i>First Essex</i>	<i>1/8/2024</i>

SENATE No. 1079

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1079) of Michael O. Moore, Jason M. Lewis, James K. Hawkins, Walter F. Timilty and other members of the General Court for legislation relative to controlling and abusive litigation. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to controlling and 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 SECTION 1. The General Laws are hereby amended by inserting after chapter 209D the
2 following chapter:-

3 Chapter 209E.

4 CONTROLLING AND 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 "Controlling and abusive litigation", litigation where the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) orally in any hearing.

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

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

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

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

Section 3. (a) If a party asserts that they are being subjected to controlling and abusive litigation, the court shall attempt to verify:

(1) that the parties are or previously were family or household members; and

(2) that the party raising the claim of controlling and abusive litigation has been found to be a victim of abuse or harassment by the other party or finds, after a hearing in the instant case, that said party has been a victim of abuse or harassment. If the court verifies that both elements are true or is unable to verify that they are not true, the court shall set a hearing to determine whether the litigation meets the definition of controlling and abusive litigation.

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

Section 4. (a) Evidence of any of the following presented at a hearing conducted pursuant to section 3 shall create a rebuttable presumption that litigation is being initiated, advanced or continued primarily for the purpose of harassing, intimidating or maintaining contact with the other party.

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

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

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

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

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

(b) In addition to dismissal or denial of any pending controlling and abusive litigation within the jurisdiction of the court, the court shall enter an order restricting controlling and abusive litigation. The order shall:

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

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

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

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

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

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

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

(c)(1) The judge or a designee may examine witnesses, court records and any other available evidence to determine if the proposed litigation is controlling and abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based.

(2) If, based on reviewing the records as well as any evidence from the person who is subject to the order, the judge or designee determines the proposed litigation is controlling and abusive litigation, it shall not be necessary for the person protected by the order to appear or participate in the proposed litigation in any way. If the judge or designee is unable to determine whether the proposed litigation is controlling and abusive without hearing from the person protected by the order, then the court shall issue an order scheduling a hearing and notifying the protected party of the party's right to appear and/or participate in the hearing. The order shall specify whether the protected party is expected to submit a written response. When possible, the

136 protected party shall be permitted to appear virtually and provided with instructions for how to
137 appear virtually.

138 (d)(1) If the judge or designee believes the litigation that the party who is subject to the
139 order restricting controlling and abusive litigation is making application to file will constitute
140 controlling and abusive litigation, the application shall be denied, dismissed or otherwise
141 disposed with prejudice.

142 (2) If the judge reasonably believes that the litigation the party who is subject to the order
143 restricting controlling and abusive litigation is making application to file will not be controlling
144 and abusive litigation, the judge or designee may grant the application and issue an order
145 permitting the filing of the case, motion or pleading. The party who is protected by the order
146 shall be served with a copy of the order at the same time as the underlying pleading.

147 (e) The findings of the judge or designee shall be in writing and made a part of the record
148 in the matter. If the party who is subject to the order restricting controlling and abusive litigation
149 disputes the finding of a designee, the party may seek review by the judge. If the party disputes
150 the finding of the judge, the party may seek review of the decision as provided by the applicable
151 court rules.

152 (f) If the application for the filing of a pleading is granted pursuant to this section, the
153 period of time commencing with the filing of the application requesting permission to file the
154 action and ending with the issuance of an order permitting filing of the action shall not be
155 computed as a part of any applicable period of limitations within which the matter must be
156 instituted.

(g) If, after a party who is subject to an order restricting controlling and abusive litigation and prefilng restrictions has made application and been granted permission to file or advance a case pursuant to this section, any judge hearing or presiding over the case, or any part thereof, determines that the person is attempting to add parties, amend the complaint or is otherwise attempting to alter the parties and issues involved in the litigation in a manner that the judge reasonably believes would constitute controlling and abusive litigation, the judge shall stay the proceedings and refer the case back to the judge or designee who granted the application to file, for further disposition.

(h)(1) If a party who is protected by an order restricting controlling and abusive litigation is served with a pleading filed by the person who is subject to the order restricting controlling and abusive litigation, and the pleading does not have an attached order allowing the pleading, the protected party may respond to the case by filing a copy of the order restricting controlling and abusive litigation.

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

(3) If a party who is protected by an order restricting controlling and abusive litigation is served with a pleading filed by the person who is subject to the order restricting controlling and

179 abusive litigation, and the pleading does not have an attached order allowing the pleading, the
180 protected party is under no obligation or duty to respond to the summons, complaint, petition,
181 motion, answer interrogatories, appear for depositions or any other responsive action required by
182 rule or statute in a civil action.

183 (i) If the judge or designee who imposed the prefiling restrictions is no longer serving in
184 the same capacity in the same judicial district where the restrictions were placed, or is otherwise
185 unavailable for any reason, any other judicial officer in that judicial district may perform the
186 review required and permitted by this section.