

## SENATE BILL No. 346

By Committee on Judiciary

1-20

1 AN ACT concerning civil actions and civil procedure; relating to abusive  
2 litigation; prohibiting plaintiffs from filing abusive civil actions against  
3 certain defendants with whom the plaintiff has a current or former  
4 family, household or dating relationship primarily to harass or  
5 maliciously injure such defendant; authorizing courts to impose  
6 prefilings restrictions on such plaintiffs.

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8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. (a) If a defendant to a civil action alleges, either by answer  
10 to the civil action or by motion made at any time that the action is pending,  
11 that the action constitutes an abusive civil action or that the person filing  
12 the action is an abusive civil action plaintiff, the court shall conduct a  
13 hearing to determine the merits of the defendant's allegations.

14 (b) (1) The court shall set the matter for hearing, hear all relevant  
15 testimony and may require any affidavits, evidence or other records that  
16 the court determines is necessary. Evidence of any of the following shall  
17 create a rebuttable presumption that the civil action is an abusive civil  
18 action and the person filing the action is an abusive civil action plaintiff  
19 and prefilings restrictions need to be imposed on the abusive civil action  
20 plaintiff pursuant to subsection (b)(2)(B):

21 (A) The same or substantially similar issues between the same or  
22 substantially similar parties that are the subject of the alleged abusive civil  
23 action have been litigated within the immediately preceding five years in  
24 another court, and the actions were dismissed on the merits or with  
25 prejudice against the alleged abusive civil action plaintiff;

26 (B) the alleged abusive civil action plaintiff has used the same or  
27 substantially similar issues that are the subject of the current civil action as  
28 the basis for an adverse complaint against the civil action defendant filed  
29 with a regulatory or licensing board, and the regulatory or licensing board  
30 dismissed the complaint pursuant to the Kansas administrative procedure  
31 act;

32 (C) the alleged abusive civil action plaintiff has been sanctioned by a  
33 court in this state, another state or the federal government for filing one or  
34 more frivolous or abusive civil actions within the immediately preceding  
35 10 years, and such civil action involves the same or substantially the same  
36 issues between the same or substantially similar parties; or

1       (D) a court in another judicial district has determined that a civil  
2 action filed against the civil action defendant was an abusive civil action,  
3 and the abusive civil action plaintiff is under or has been under prefiling  
4 restrictions in that judicial district.

5       (2) If a court finds by a preponderance of the evidence that a person  
6 filing a civil action is an abusive civil action plaintiff and any or all civil  
7 actions by the abusive civil action plaintiff against the abusive civil action  
8 defendant that are pending before the court are abusive civil actions, such  
9 actions shall be dismissed, and the court shall:

10       (A) Award to the defendant reasonable attorney fees and costs of  
11 defending the abusive civil action; and

12       (B) impose prefiling restrictions on any civil action that the abusive  
13 civil action plaintiff attempts to file for a period of not less than 48 months  
14 but not more than 72 months.

15       (3) If the court finds by a preponderance of the evidence that the  
16 action is not an abusive civil action or that the plaintiff is not an abusive  
17 civil action plaintiff, the court may grant the plaintiff remedies as may be  
18 just, including, but not limited to, granting judgment in favor of the  
19 plaintiff, granting partial judgment in favor of the plaintiff or allowing  
20 factual interpretations in favor of the plaintiff, and the court shall award to  
21 the plaintiff reasonable attorney fees and costs of defending the claim that  
22 the action was an abusive civil action.

23       (c) (1) If prefiling restrictions have been imposed pursuant to  
24 subsection (b)(2)(B), an abusive civil action plaintiff may appear before  
25 the court that imposed the prefiling restrictions to make application for  
26 permission to institute a civil action. The court may examine witnesses,  
27 including, but not limited to, the abusive civil action plaintiff and the civil  
28 action defendant, to determine if the proposed civil action is or is not an  
29 abusive civil action and if there are reasonable and legitimate grounds  
30 upon which the complaint is based.

31       (2) There shall be a rebuttable presumption that any proposed civil  
32 action is an abusive civil action if any of the defendants in the proposed  
33 action were civil action defendants in one or more of the actions that were  
34 the basis for the person being declared an abusive civil action plaintiff.

35       (3) If the court finds that the proposed civil action is an abusive civil  
36 action, the application shall be denied, and the court shall order a time  
37 when the person may next make application to file a civil action. Such  
38 finding is subject to appeal.

39       (4) If the court finds that the proposed civil action is not an abusive  
40 civil action, the court may grant the application and issue an order  
41 permitting the filing of the civil action. Such order shall be attached to the  
42 front of the complaint when the abusive civil action plaintiff files the civil  
43 action. The defendant to such action shall be served with a copy of the

1 order at the same time that the complaint is served. If a copy of the order is  
2 not attached to the complaint or served on the defendant, the defendant is  
3 under no obligation or duty to respond to the complaint, answer  
4 interrogatories, appear for depositions or any other responsive action. If a  
5 copy of the order is not served along with the action, the defendant may  
6 obtain a certified copy of the order from the court.

7 (5) If the proposed civil action is filed and the court determines that  
8 the plaintiff is attempting to add parties, amend the complaint or is  
9 otherwise attempting to alter the parties and issues involved in the civil  
10 action in a manner that the court reasonably believes would make the  
11 action an abusive civil action, the court may order a continuance or  
12 dismiss the action. If a person against whom prefilings restrictions have  
13 been imposed pursuant to subsection (b)(2)(B) attempts to file an action in  
14 violation of such restrictions, the court shall dismiss the action.

15 (d) As used in this section:

16 (1) "Abusive civil action" means a civil action filed by a plaintiff  
17 against a defendant with whom the plaintiff shares a civil action party  
18 relationship primarily to harass or maliciously injure the defendant and:

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

23 (B) allegations and other factual contentions made in the civil action  
24 are without the existence of evidentiary support; or

25 (C) the issue that is the basis of the civil action has previously been  
26 filed in one or more courts by the same plaintiff, and the actions have been  
27 litigated and disposed of unfavorably to the plaintiff.

28 (2) "Abusive civil action plaintiff" means a person who filed a civil  
29 action that a court has determined to be an abusive civil action.

30 (3) "Civil action defendant" means a person against whom a civil  
31 action has been filed that a court has determined to be an abusive civil  
32 action.

33 (4) "Civil action party relationship" means the plaintiff filing a civil  
34 action and the civil action defendant are adults who:

35 (A) Are current or former spouses;  
36 (B) live together or have lived together;  
37 (C) are dating, have dated or have had a sexual relationship;  
38 (D) are related by blood or adoption;  
39 (E) are related or were formerly related by marriage; or  
40 (F) are children of a person in a relationship described in this  
41 paragraph.

42 (5) "Harass or maliciously injure" means the civil action was filed  
43 with the intent or was primarily designed to:

1       (A) Exhaust, deplete, impair or adversely impact the civil action  
2 defendant's financial resources unless punitive damages are requested and  
3 appropriate or a change in the circumstances of the parties provides a good  
4 faith basis to seek a change to a financial award, support or distribution of  
5 resources;

6       (B) prevent or interfere with the ability of a civil action defendant to  
7 raise a child or children for whom the civil action defendant has legal  
8 custody in the manner that the civil action defendant deems appropriate  
9 unless the civil action plaintiff has a lawful right to interfere and a good  
10 faith basis for doing so;

11      (C) force, coerce or attempt to force or coerce the civil action  
12 defendant to agree to or make adverse concessions concerning financial,  
13 custodial, support or other issues if the issues in question have been  
14 previously litigated and decided in favor of the civil action defendant;

15      (D) impair or attempt to impair the health or well-being of the civil  
16 action defendant or a dependent of the civil action defendant;

17      (E) prevent, interfere or adversely impact the ability of the civil  
18 action defendant to pursue or maintain a livelihood or lifestyle at the same  
19 standard or a better standard as the civil action defendant enjoyed prior to  
20 the filing of the action primarily for the purpose of harassing or  
21 maliciously injuring the civil action defendant; or

22      (F) impair, diminish or tarnish the civil action defendant's reputation  
23 in the community or alienate the civil action defendant's friends,  
24 colleagues, attorneys or professional associates by subjecting parties  
25 without knowledge of or not reasonably relevant to the civil action to  
26 unreasonably or unnecessarily complex, lengthy or intrusive  
27 interrogatories or depositions.

28      Sec. 2. This act shall take effect and be in force from and after its  
29 publication in the statute book.