

HOUSE No. 732

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas J. Calter and Viriato M. deMacedo

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 to prevent vexatious litigation and waste of judicial resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

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By Representative Calter of Kingston and Senator deMacedo, a joint petition (accompanied by bill, House, No. 732) of Thomas J. Calter, Viriato M. deMacedo and others that plaintiffs who have filed five or more unsuccessful petitions in the past seven years be classified as vexatious litigants. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1218 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to prevent vexatious litigation and waste of judicial resources.

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. Section 6E of Chapter 231 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting, after the fourth paragraph, the following:-

3 “Defendant,” any person or entity, including a corporation, association, partnership, firm,
4 or governmental entity, against whom an action is or was commenced or is sought to be
5 commenced;

6 “Security,” an undertaking by a vexatious litigant to ensure payment to a defendant in an
7 amount reasonably sufficient to cover the defendant’s anticipated, reasonable expenses of
8 litigation, including attorney’s fees and taxable costs;

9 “Vexatious litigant,”

10 (1) A party as defined in this section who, in the immediately preceding 5-year period,
11 has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this
12 state, except an action governed by the Massachusetts Uniform Small Claims Rules, which
13 actions have been finally and adversely determined against such person or entity; or

14 (2) Any party previously found to be a vexatious litigant pursuant to section 6F½.

15 SECTION 2. Chapter 231 of the General Laws, as so appearing, is hereby amended by
16 inserting, after Section 6F, the following section:-

17 SECTION 6F½. (a) In any civil action pending in any court of this state, including
18 actions governed by the Massachusetts Uniform Small Claims Rules, any defendant may move
19 the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The
20 motion shall be based on the grounds, and supported by a showing, that the plaintiff is a
21 vexatious litigant and is not reasonably likely to prevail on the merits of the action against the
22 moving defendant.

23 (b) At the hearing upon any defendant's motion for an order to post security, the court
24 shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the
25 consideration of the motion. No determination made by the court in such a hearing shall be
26 admissible on the merits of the action or deemed to be a determination of any issue in the action.
27 If, after hearing the evidence, the court determines that the plaintiff is a vexatious litigant and is
28 not reasonably likely to prevail on the merits of the action against the moving defendant, the
29 court shall order the plaintiff to furnish security to the moving defendant in an amount and within
30 such time as the court deems appropriate.

31 (c) If the plaintiff fails to post security required by an order of the court under this
32 section, the court shall immediately issue an order dismissing the action with prejudice as to the
33 defendant for whose benefit the security was ordered.

34 (d) If a motion for an order to post security is filed prior to the trial in an action, the
35 action shall be automatically stayed and the moving defendant need not plead or otherwise
36 respond to the complaint until 10 days after the motion is denied. If the motion is granted, the
37 moving defendant shall respond or plead no later than 10 days after the required security has
38 been furnished.

39 (e) In addition to any other relief provided in this section, the court may, on its own
40 motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from
41 commencing, pro se, any new action in the courts without first obtaining leave of the
42 administrative judge of that circuit. Disobedience of such an order may be punished as contempt
43 of court by the administrative judge of that circuit. Leave of court shall be granted by the
44 administrative judge only upon a showing that the proposed action is meritorious and is not
45 being filed for the purpose of delay or harassment. The administrative judge may condition the
46 filing of the proposed action upon the furnishing of security as provided in this section.

47 (f) The clerk of the court shall not file any new action by a vexatious litigant pro se unless
48 the vexatious litigant has obtained an order from the administrative judge permitting such filing.
49 If the clerk of the court mistakenly permits a vexatious litigant to file an action pro se in
50 contravention of a prefiling order, any party to that action may file with the clerk and serve on
51 the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant
52 subject to a prefiling order. The filing of such a notice shall automatically stay the litigation

53 against all defendants to the action. The administrative judge shall automatically dismiss the
54 action with prejudice within 10 days after the filing of such notice unless the plaintiff files a
55 motion for leave to file the action. If the administrative judge issues an order permitting the
56 action to be filed, the defendants need not plead or otherwise respond to the complaint until 10
57 days after the date of service by the plaintiff, by United States mail, of a copy of the order
58 granting leave to file the action.

59 (g) The clerk of a court shall provide copies of all prefiling orders to the Clerk of the
60 Supreme Judicial Court, who shall maintain a registry of all vexatious litigants.

61 (h) The relief provided under this section shall be cumulative to any other relief or
62 remedy available to a defendant under the laws of this state and the Massachusetts Rules of Civil
63 Procedure