

JAN 22 2010

S.B. NO. 2369

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# A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1                                   PART I   UNEMPLOYMENT INSURANCE

2           SECTION 1. Chapter 383, Hawaii Revised Statutes, is  
3 amended by adding a new section to be appropriately designated  
4 and to read as follows:

5           "§383-    Unemployment compensation personnel; domestic  
6 violence training. Unemployment compensation personnel shall be  
7 trained in:

8           (1) The nature and dynamics of domestic or sexual violence  
9           and how to identify potential cases;

10          (2) Methods of determining whether domestic or sexual  
11          violence has occurred; and

12          (3) Keeping information about possible or actual  
13          experiences of domestic or sexual violence  
14          confidential;

15 to ensure that requests for unemployment compensation based on  
16 separations stemming from domestic or sexual violence are  
17 reliably screened, identified, and adjudicated, and that the



1 individual's claim and submitted documentation remain  
2 confidential."

3 SECTION 2. Section 383-1, Hawaii Revised Statutes, is  
4 amended by adding five new definitions to be appropriately  
5 inserted and to read as follows:

6 "Domestic abuse" means conduct defined in section 586-1.

7 "Domestic or sexual violence" means domestic abuse, sexual  
8 assault, or stalking.

9 "Sexual assault" means any conduct proscribed by chapter  
10 707, part V.

11 "Stalking" means engaging in a course of conduct directed  
12 at a specifically targeted person that would cause a reasonable  
13 person to suffer substantial emotional distress or to fear  
14 bodily injury, sexual assault, or death to the person or to the  
15 person's spouse, parent, child, or any other person who  
16 regularly resides in the person's household, and where the  
17 conduct does cause the targeted person or a member of the  
18 targeted person's household to have such distress or fear.

19 "Victim services organization" includes:

20 (1) Nonprofit, nongovernmental organizations that provide  
21 assistance to victims of domestic or sexual violence



1           or that advocate for such victims, including rape  
2           crisis centers;

3           (2) Organizations operating a shelter or providing  
4           professional counseling services; and

5           (3) Organizations providing assistance through the legal  
6           process."

7           SECTION 3. Section 383-7.6, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "~~§~~383-7.6~~§~~ Separation for compelling family reason.

10          (a) An individual shall not be disqualified from regular  
11 unemployment benefits for separating from employment if that  
12 separation is for a compelling family reason.

13          For purposes of this section, the term "compelling family  
14 reason" means any of the following:

15          (1) Domestic or sexual violence that is verified by  
16 reasonable and confidential documentation that causes  
17 the individual to reasonably believe that the  
18 individual's continued employment may jeopardize the  
19 safety of the individual or any member of the  
20 individual's immediate family (as defined by the  
21 United States Secretary of Labor), including any of  
22 the following circumstances:



- 1           (A) The individual has a reasonable fear of the  
2                   occurrence of future domestic or sexual violence  
3                   at, en route to, or en route from the  
4                   individual's place of employment, including being  
5                   a victim of stalking;
- 6           (B) The anxiety of the individual to relocate to  
7                   avoid future domestic or sexual violence against  
8                   the individual or the individual's minor child  
9                   prevents the individual from reporting to work;
- 10          (C) The need of the individual or the individual's  
11             minor child to obtain treatment to recover from  
12             the physical or psychological effects of domestic  
13             or sexual violence prevents the individual from  
14             reporting to work;
- 15          (D) The employer's refusal to grant the individual's  
16             request for leave to address domestic or sexual  
17             violence and its effects on the individual or the  
18             individual's minor child, including leave  
19             authorized by Section 102 of the Federal Family  
20             and Medical Leave Act of 1993, Public Law 103-3,  
21             as amended, or other federal, state, or county  
22             law; or



1 (E) Any other circumstance in which domestic or  
2 sexual violence causes the individual to  
3 reasonably believe that separation from  
4 employment is necessary for the future safety of  
5 the individual, the individual's minor child, or  
6 other individuals who may be present in the  
7 employer's workplace;

8 (2) Illness or disability of a member of the individual's  
9 immediate family (as defined by the United States  
10 Secretary of Labor); or

11 (3) The need for the individual to accompany the  
12 individual's spouse, because of a change in the  
13 location of the spouse's employment, to a place from  
14 which it is impractical for the individual to commute  
15 to work.

16 (b) The department may request as reasonable and  
17 confidential documentation under subsection (a)(1) the following  
18 evidence:

19 (1) A notarized written statement of the individual  
20 attesting to the status of the individual or the  
21 individual's minor child as a victim of domestic or  
22 sexual violence and explaining how continued



1 employment creates an unreasonable risk of further  
2 violence;

3 (2) A signed written statement from:

4 (A) An employee, agent, or volunteer of a victim  
5 services organization;

6 (B) The individual's attorney or advocate;

7 (C) A minor child's attorney or advocate; or

8 (D) A medical or other professional from whom the  
9 individual or the individual's minor child has  
10 sought assistance related to the domestic or  
11 sexual violence,

12 attesting to the domestic or sexual violence and  
13 explaining how the continued employment creates an  
14 unreasonable risk of further violence; or

15 (3) A police or court record suggesting or demonstrating  
16 that the continued employment may cause an  
17 unreasonable risk of further violence.

18 (c) All information provided to the department pursuant to  
19 this section, including any statement of the individual or any  
20 other documentation, record, or corroborating evidence  
21 discussing or relating to domestic or sexual violence, and the  
22 fact that the individual has applied for, inquired about, or



1 obtained unemployment compensation by reason of this section  
2 shall be retained in the strictest confidence by the  
3 individual's former or current employer, and shall not be  
4 disclosed except to the extent that disclosure is requested or  
5 consented to by the employee, ordered by a court or  
6 administrative agency, or otherwise required by applicable  
7 federal or state law.

8 ~~[(d) As used in this section, the terms "domestic or~~  
9 ~~sexual violence", "stalking", and "victim services organization"~~  
10 ~~shall have the same meaning as in section 378-71.]~~

11 (d) The department shall ensure that all applicants for  
12 unemployment compensation and individuals inquiring about such  
13 compensation are adequately notified of the provisions of this  
14 section.

15 (e) Nothing in this section shall be construed to  
16 supersede any provision of any federal, state, or local law,  
17 collective bargaining agreement, or employment benefits program  
18 or plan that provides greater unemployment insurance benefits  
19 for victims of domestic or sexual violence than those  
20 established herein."



PART II EMPLOYMENT PRACTICES

SECTION 4. Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§378- Discrimination on the basis of domestic or sexual abuse; civil liability. (a) Any employer that violates section 378-2(9) shall be liable to the affected individual for:

(1) Damages equal to the amount of wages, salary, employment benefits, or other compensation denied or lost to such individual by reason of the violation, and the interest on that amount calculated at the prevailing rate;

(2) Compensatory damages, including damages for future pecuniary losses; and emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment or life, and other nonpecuniary losses;

(3) Such punitive damages, up to three times the amount of actual damages sustained, as the court determines to be appropriate; and

(4) Such equitable relief as may be appropriate, including employment, reinstatement, and promotion.





1           (b) An action may be brought under this section not later  
2 than two years after the date of the last event constituting the  
3 alleged violation for which the action is brought.

4           SECTION 5. Chapter 378, Hawaii Revised Statutes, is  
5 amended by adding a new section to part VI to be appropriately  
6 designated and to read as follows:

7           "§378- Employer violations of victims leave; civil  
8 liability. (a) Any employer that violates any provision of  
9 section 378-72 shall be liable to any affected individual:

10           (1) For damages equal to:

11           (A) The amount of:

12                   (i) Wages, salary, employment benefits, or other  
13 compensation denied or lost to such  
14 individual by reason of the violation; or

15                   (ii) In a case in which wages, salary, employment  
16 benefits, or other compensation has not been  
17 denied or lost to the individual, any actual  
18 monetary losses sustained by the individual  
19 as a direct result of the violation;

20           (B) The interest on the amount described in  
21 subparagraph (A) calculated at the prevailing  
22 rate; and



1           (C) An additional amount as liquidated damages equal  
2           to the sum of the amount described in  
3           subparagraph (A) and the interest described in  
4           subparagraph (B), except that if an employer that  
5           has violated section 378-72(m) proves to the  
6           satisfaction of the court that the act or  
7           omission that violated section 378-72(m) was in  
8           good faith and that the employer had reasonable  
9           grounds for believing that the act or omission  
10           was not a violation of subsection 378-72(m), such  
11           court may, in the discretion of the court, reduce  
12           the amount of the liability to the amount and  
13           interest determined under subparagraphs (A) and  
14           (B); and

15           (2) For equitable relief as may be appropriate, including  
16           employment, reinstatement, and promotion.

17           (b) An action may be brought under this section not later  
18           than two years after the date of the last event constituting the  
19           alleged violation for which the action is brought. In the case  
20           of an action brought for a wilful violation of section 378-  
21           72(m), such action may be brought within two years after the



1 date of the last event constituting the alleged violation for  
2 which the action is brought."

3 SECTION 6. Section 378-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§378-2 Discriminatory practices made unlawful; offenses**  
6 **defined.** It shall be an unlawful discriminatory practice:

7 (1) Because of race, sex, sexual orientation, age,  
8 religion, color, ancestry, disability, marital status,  
9 or arrest and court record:

10 (A) For any employer to refuse to hire or employ or  
11 to bar or discharge from employment, or otherwise  
12 to discriminate against any individual in  
13 compensation or in the terms, conditions, or  
14 privileges of employment;

15 (B) For any employment agency to fail or refuse to  
16 refer for employment, or to classify or otherwise  
17 to discriminate against, any individual;

18 (C) For any employer or employment agency to print,  
19 circulate, or cause to be printed or circulated  
20 any statement, advertisement, or publication or  
21 to use any form of application for employment or  
22 to make any inquiry in connection with



1 prospective employment, which expresses, directly  
2 or indirectly, any limitation, specification, or  
3 discrimination;

4 (D) For any labor organization to exclude or expel  
5 from its membership any individual or to  
6 discriminate in any way against any of its  
7 members, employer, or employees; or

8 (E) For any employer or labor organization to refuse  
9 to enter into an apprenticeship agreement as  
10 defined in section 372-2; provided that no  
11 apprentice shall be younger than sixteen years of  
12 age;

13 (2) For any employer, labor organization, or employment  
14 agency to discharge, expel, or otherwise discriminate  
15 against any individual because the individual has  
16 opposed any practice forbidden by this part or has  
17 filed a complaint, testified, or assisted in any  
18 proceeding respecting the discriminatory practices  
19 prohibited under this part;

20 (3) For any person whether an employer, employee, or not,  
21 to aid, abet, incite, compel, or coerce the doing of



- 1 any of the discriminatory practices forbidden by this  
2 part, or to attempt to do so;
- 3 (4) For any employer to violate the provisions of section  
4 121-43 relating to nonforfeiture for absence by  
5 members of the national guard;
- 6 (5) For any employer to refuse to hire or employ or to bar  
7 or discharge from employment, any individual because  
8 of assignment of income for the purpose of satisfying  
9 the individual's child support obligations as provided  
10 for under section 571-52;
- 11 (6) For any employer, labor organization, or employment  
12 agency to exclude or otherwise deny equal jobs or  
13 benefits to a qualified individual because of the  
14 known disability of an individual with whom the  
15 qualified individual is known to have a relationship  
16 or association;
- 17 (7) For any employer or labor organization to refuse to  
18 hire or employ, or to bar or discharge from  
19 employment, or withhold pay, demote, or penalize a  
20 lactating employee because an employee breastfeeds or  
21 expresses milk at the workplace. For purposes of this



1 paragraph, the term "breastfeeds" means the feeding of  
2 a child directly from the breast; [~~or~~]

3 (8) For any employer to refuse to hire or employ or to bar  
4 or discharge from employment, or otherwise to  
5 discriminate against any individual in compensation or  
6 in the terms, conditions, or privileges of employment  
7 of any individual because of the individual's credit  
8 history or credit report, unless the information in  
9 the individual's credit history or credit report  
10 directly relates to a bona fide occupational  
11 qualification under section 378-3(2) [~~-~~]; or

12 (9) For an employer to fail to hire, refuse to hire,  
13 discharge, or harass any individual, or otherwise  
14 discriminate against any individual with respect to  
15 the compensation, terms, conditions, or privileges of  
16 employment of the individual, including retaliation in  
17 any form or manner, because:

18 (A) The individual is, or the employer perceives the  
19 individual to be, a victim of domestic or sexual  
20 violence;

21 (B) The individual attended, participated in,  
22 prepared for, or requested leave to attend,



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1 participate in, or prepare for, a criminal or  
2 civil court proceeding relating to an incident of  
3 domestic or sexual violence of which the  
4 individual, or the individual's minor child, was  
5 a victim;

6 (C) The individual, in response to actual or  
7 threatened domestic or sexual violence, requested  
8 that the employer implement a reasonable safety  
9 procedure or a job-related modification to  
10 enhance the security of that individual or  
11 safeguard the workplace involved; or

12 (D) The workplace is disrupted or threatened by the  
13 action of a person whom the individual states has  
14 committed or threatened to commit domestic or  
15 sexual violence against the individual or the  
16 individual's minor child.

17 For the purposes of this section, "domestic or sexual  
18 violence" and "stalking" have the same meaning as  
19 defined in section 383-1."

20 SECTION 7. Section 378-72, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           " ~~[f] §378-72 [f]~~ Leave of absence for domestic or sexual  
2 violence. (a) ~~[An employer employing fifty or more employees~~  
3 ~~shall allow an employee to take up to thirty days of unpaid~~  
4 ~~victim leave from work per calendar year, or an employer~~  
5 ~~employing not more than forty nine employees shall allow an~~  
6 ~~employee to take up to five days of unpaid leave from work per~~  
7 ~~calendar year,]~~ An employer shall allow an employee to take  
8 thirty days of leave, either intermittently or on a reduced  
9 leave schedule, within a twelve-month period if the employee or  
10 the employee's minor child is a victim of domestic or sexual  
11 violence; provided the leave is to [either]:

- 12           (1) Seek medical attention for the employee or employee's  
13           minor child to recover from physical or psychological  
14           injury or disability caused by domestic or sexual  
15           violence;
- 16           (2) Obtain services from a victim services organization;
- 17           (3) Obtain psychological or other counseling;
- 18           (4) Temporarily or permanently relocate; or
- 19           (5) Take legal action, including preparing for or  
20           participating in any civil or criminal legal  
21           proceeding related to or resulting from the domestic  
22           or sexual violence, or other actions to enhance the





1 physical, psychological, or economic health or safety  
2 of the employee or the employee's minor child or to  
3 enhance the safety of those who associate with or work  
4 with the employee.

5 (b) An employee's absence from work that is due to or  
6 resulting from domestic [~~abuse~~] or sexual violence against the  
7 employee or the employee's minor child as provided in this  
8 section shall be considered by an employer to be a justification  
9 for leave for a reasonable period of time, not to exceed the  
10 total number of days [~~allocable for each category of employer~~]  
11 specified under subsection (a).

12 "Reasonable period of time" as used in this section means:

13 (1) Where due to physical or psychological injury to or  
14 disability to the employee or employee's minor child,  
15 the period of time determined to be necessary by the  
16 attending health care provider, considering the  
17 condition of the employee or employee's minor child,  
18 and the job requirements; and

19 (2) Where due to an employee's need to take legal or other  
20 actions, including preparing for or participating in  
21 any civil or criminal legal proceeding, obtaining  
22 services from a victim services organization, or



1 permanently or temporarily relocating, the period of  
2 time necessary to complete the activity as determined  
3 by the employee's or employee's minor child's attorney  
4 or advocate, court, or personnel of the relevant  
5 victim services organization.

6 (c) Where an employee is a victim of domestic or sexual  
7 violence and seeks leave for medical attention to recover from  
8 physical or psychological injury or disability caused by  
9 domestic or sexual violence, the employer may request that the  
10 employee provide:

11 (1) A certificate from a health care provider estimating  
12 the number of leave days necessary and the estimated  
13 commencement and termination dates of leave required  
14 by the employee; and

15 (2) Prior to the employee's return, a medical certificate  
16 from the employee's attending health care provider  
17 attesting to the employee's condition and approving  
18 the employee's return to work.

19 (d) Where an employee has taken not more than five  
20 calendar days of leave for non-medical reasons, the employee  
21 shall provide certification to the employer in the form of a  
22 signed statement within a reasonable period after the employer's



1 request, that the employee or the employee's minor child is a  
2 victim of domestic or sexual violence and the leave is for one  
3 of the purposes enumerated in subsection (a). If the leave  
4 exceeds five days per calendar year, then the certification  
5 shall be provided by one of the following methods:

6 (1) A signed written statement from an employee, agent, or  
7 volunteer of a victim services organization, from the  
8 employee's attorney or advocate, from a minor child's  
9 attorney or advocate, or a medical or other  
10 professional from whom the employee or the employee's  
11 minor child has sought assistance related to the  
12 domestic or sexual violence; or

13 (2) A police or court record related to the domestic or  
14 sexual violence.

15 (e) If certification is required, no leave shall be  
16 protected until a certification, as provided in this section, is  
17 provided to the employer.

18 (f) The employee shall provide the employer with  
19 reasonable notice of the employee's intention to take the leave,  
20 unless providing that notice is not practicable due to imminent  
21 danger to the employee or the employee's minor child.



1 (g) Nothing in this section shall be construed to prohibit  
2 an employer from requiring an employee on victim leave to report  
3 not less than once a week to the employer on the status of the  
4 employee and intention of the employee to return to work.

5 (h) Upon return from leave under this section, the  
6 employee shall return to the employee's original job or to a  
7 position of comparable status and pay, without loss of  
8 accumulated service credits and privileges, except that nothing  
9 in this subsection shall be construed to entitle any restored  
10 employee to the accrual of:

11 (1) Any seniority or employment benefits during any period  
12 of leave, unless the seniority or benefits would be  
13 provided to a similarly situated employee who was on  
14 leave due to a reason other than domestic or sexual  
15 violence; or

16 (2) Any right, benefit, or position of employment to which  
17 the employee would not have otherwise been entitled.

18 (i) During any period in which an employee takes leave  
19 under this section, the employer shall maintain coverage for the  
20 employee under any group health plan, as defined in Section  
21 5000(b)(1) of the Internal Revenue Code of 1986, for the  
22 duration of such leave, at the level and under the conditions



1 coverage would have been provided if the employee had continued  
2 in employment continuously for the duration of such leave.

3 (j) An employer may recover the premium that the employer  
4 paid for maintaining coverage for the employee as specified  
5 under subsection (i) during any period of leave taken pursuant  
6 to this section if:

7 (1) The employee fails to return from leave under this  
8 section after the period of leave to which the  
9 employee is entitled has expired; and

10 (2) The employee fails to return to work for a reason  
11 other than the continuation of, recurrence of, or  
12 onset of an episode of domestic or sexual violence  
13 that entitles the employee to leave pursuant to this  
14 section.

15 An employer may require an employee who claims that the employee  
16 is unable to return to work because of the continuation of,  
17 recurrence of, or onset of an episode of domestic or sexual  
18 violence to provide, within a reasonable period after making the  
19 claim, certification to the employer that the employee is unable  
20 to return to work because of such reason. This certification  
21 requirement may be satisfied by providing to the employer a  
22 sworn statement of the employee; documentation from an employee,



1 agent, or volunteer of a victim services organization, an  
2 attorney, a member of the clergy, or a medical or other  
3 professional, from whom the employee or the employee's family or  
4 household member has sought assistance in addressing domestic or  
5 sexual violence; or a police or court record.

6 (k) If an employee who takes leave under this section is a  
7 salaried employee who is among the highest paid ten per cent of  
8 the employees employed by the employer within seventy-five miles  
9 of the facility at which the employee is employed, the employer  
10 may deny restoration under subsection (h) if:

11 (1) Such denial is necessary to prevent substantial and  
12 grievous economic injury to the operations of the  
13 employer; and

14 (2) The employer notifies the employee of the intent of  
15 the employer to deny restoration on such basis at the  
16 time the employer determines that such injury would  
17 occur.

18 ~~(i)~~ (1) All information provided to the employer under  
19 this section, including statements of the employee, or any other  
20 documentation, record, or corroborating evidence, and the fact  
21 that the employee or employee's minor child has been a victim of  
22 domestic or sexual violence or the employee has requested leave



1 pursuant to this section, shall be maintained in the strictest  
2 confidence by the employer, and shall not be disclosed, except  
3 to the extent that disclosure is:

- 4 (1) Requested or consented to by the employee;
- 5 (2) Ordered by a court or administrative agency; or
- 6 (3) Otherwise required by applicable federal or state law.

7 (m) It shall be unlawful for any employer to discharge or  
8 harass any individual, or otherwise discriminate against any  
9 individual with respect to the individual's compensation, terms,  
10 conditions, or privileges of employment, including retaliation  
11 in any form or manner, because the individual has:

- 12 (1) Exercised any right provided under this section;
- 13 (2) Opposed any practice made unlawful by this section;
- 14 (3) Filed any charge, or has instituted or caused to be  
15 instituted any proceeding, under or related to this  
16 section;
- 17 (4) Given, or is about to give, any information in  
18 connection with any inquiry or proceeding relating to  
19 any right provided under this section; or
- 20 (5) Testified, or is about to testify, in any inquiry or  
21 proceeding relating to any right provided under this  
22 section.



1       ~~[(j) Any employee denied leave by an employer in wilful~~  
2 ~~violation of this section may file a civil action against the~~  
3 ~~employer to enforce this section and recover costs, including~~  
4 ~~reasonable attorney's fees, incurred in the civil action.]"~~

5       SECTION 8. Section 378-73, Hawaii Revised Statutes, is  
6 amended to read as follows:

7       "~~[+]~~ §378-73 ~~[+]~~ Relationship to other leaves. ~~[If an~~  
8 ~~employee is entitled to take paid or unpaid leave pursuant to~~  
9 ~~other federal, state, or county law, or pursuant to an~~  
10 ~~employment agreement, a collective bargaining agreement, or an~~  
11 ~~employment benefits program or plan, which may be used for the~~  
12 ~~purposes listed under section 378-72(a), the employee shall~~  
13 ~~exhaust such other paid and unpaid leave benefits before victim~~  
14 ~~leave benefits under this chapter may be applied. The~~  
15 ~~combination of such other paid or unpaid leave benefits that may~~  
16 ~~be applied and victim leave benefits shall not exceed the~~  
17 ~~maximum number of days specified under section 378-72(a).]~~ An  
18 employee who is entitled to take paid or unpaid leave, including  
19 family, medical, sick, annual, personal, or similar leave,  
20 pursuant to state or local law, a collective bargaining  
21 agreement, or an employment benefits program or plan, may elect





1 to substitute any period of such leave for an equivalent period  
2 of leave provided under section 378-72."

3 PART III EMERGENCY LEAVE BENEFITS

4 SECTION 9. Chapter 378, Hawaii Revised Statutes, is  
5 amended by adding a new section to part VI to be appropriately  
6 designated and to read as follows:

7 "§378- Emergency leave benefits. (a) An employee who  
8 takes emergency leave pursuant to section 378-72 may be eligible  
9 for nonrecurrent short-term emergency benefits for the period of  
10 time such leave is taken.

11 (b) An individual seeking emergency benefits under this  
12 section shall submit an application to the department of human  
13 services. The department of human services shall consider such  
14 applications on an expedited basis, and shall determine  
15 eligibility and release payments not later than seven days after  
16 the applicant submits an application.

17 (c) In calculating the eligibility of an individual for  
18 benefits under this section, the department of human services  
19 shall count only the cash available or accessible to the  
20 individual.

21 (d) The department of human services shall fund this  
22 program, including the benefits provided under this section,



1 from the spouse and child abuse special account, established  
2 under section 346-7.5."

3 SECTION 10. Section 346-7.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§346-7.5 Spouse and child abuse special account;  
6 department of human services. (a) There is established within  
7 the state treasury a special fund to be known as the "spouse and  
8 child abuse special account", and to be administered and  
9 expended by the department of human services.

10 (b) The proceeds of the account shall be reserved for use  
11 by the department of human services for staff programs, and  
12 grants or purchases of service, consistent with chapters 42F and  
13 103F, that support or provide spouse or child abuse intervention  
14 or prevention as authorized by law. These proceeds shall be  
15 used for new or existing programs and shall not supplant any  
16 other funds previously allocated to these programs. The account  
17 shall be kept separate and apart from all other funds in the  
18 treasury.

19 (c) The account shall consist of fees remitted pursuant to  
20 sections 338-14.5 and 572-5, income tax remittances allocated  
21 under section 235-102.5, finances collected pursuant to sections  
22 580-10, 586-4(e), and 586-11, interest and investment earnings,



1 grants, donations, and contributions from private or public  
2 sources. All realizations of the account shall be subject to  
3 the conditions specified in subsection (b).

4 (d) The department of human services, in coordination with  
5 the department of health, shall submit an annual report to the  
6 legislature, prior to the convening of each regular session,  
7 providing an accounting of the receipts of and expenditures from  
8 the account."

9 SECTION 11. Section 580-10, Hawaii Revised Statutes, is  
10 amended by amending subsection (e) to read as follows:

11 "(e) Any fines collected pursuant to subsection (d) shall  
12 be deposited into the spouse and child abuse special account  
13 established under section [~~601-3.6.~~] 346-7.5."

14 SECTION 12. Section 586-4, Hawaii Revised Statutes, is  
15 amended by amending subsection (f) to read as follows:

16 "(f) Any fines collected pursuant to subsection [~~+~~] (e) [~~+~~]  
17 shall be deposited into the spouse and child abuse special  
18 account established under section [~~601-3.6.~~] 346-7.5."

19 SECTION 13. Section 586-11, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



1           "(b) Any fines collected pursuant to subsection (a) shall  
2 be deposited into the spouse and child abuse special account  
3 established under section [~~601-3.6-~~] 346-7.5."

4           SECTION 14. Section 601-3.6, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "**§601-3.6 Spouse and child abuse special account;**  
7 **judiciary.** (a) There is established within the state treasury  
8 a special fund to be known as the "spouse and child abuse  
9 special account", and to be administered and expended by the  
10 judiciary.

11           (b) The proceeds of the account shall be reserved for use  
12 by the judiciary for staff programs, and grants or purchases of  
13 service, consistent with chapters 42F and 103F, that support or  
14 provide spouse or child abuse intervention or prevention as  
15 authorized by law. These proceeds shall be used for new or  
16 existing programs and shall not supplant any other funds  
17 previously allocated to these programs. The account shall be  
18 kept separate and apart from all other funds in the treasury.

19           (c) The account shall consist of fees remitted pursuant to  
20 sections 338-14.5 and 572-5, income tax remittances allocated  
21 under section 235-102.5, [~~fines collected pursuant to sections~~  
22 ~~{586-4(e)}, 580-10, and 586-11~~], interest and investment



1 earnings, grants, donations, and contributions from private or  
2 public sources. All realizations of the account shall be  
3 subject to the conditions specified in subsection (b).

4 (d) The judiciary, in coordination with the department of  
5 health, shall submit an annual report to the legislature, prior  
6 to the convening of each regular session, providing an  
7 accounting of the receipts of and expenditures from the  
8 account."

9 PART IV PUBLIC ASSISTANCE

10 SECTION 15. Chapter 28, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 "§28- Domestic or sexual abuse victims who receive  
14 public assistance; assistance for redress. (a) The attorney  
15 general shall ensure that any public agency that violates  
16 section 346-A by taking an action prohibited under that section  
17 against any public assistance recipient with respect to the  
18 amount, terms, or conditions of public assistance, shall provide  
19 the recipient who received a less favorable amount, term, or  
20 condition of public assistance as a result of the violation:

21 (1) The amount of any public assistance denied or lost to  
22 such recipient by reason of the violation;



1       (2) The interest on the amount of any public assistance  
2           denied or lost by reason of the violation; and

3       (3) Such equitable relief as may be appropriate.

4       (b) The attorney general shall adopt rules according to  
5 chapter 91 necessary to effectuate this section."

6           SECTION 16. Chapter 346, Hawaii Revised Statutes, is  
7 amended by adding two new sections to be appropriately  
8 designated and to read as follows:

9           "346-A Public assistance; discrimination on the basis of  
10 domestic or sexual violence prohibited. It shall be unlawful  
11 for a public assistance recipient's benefits to be denied,  
12 reduced, terminated, or otherwise sanctioned, or for a public  
13 assistance recipient to be discriminated against with respect to  
14 the amount, terms, or conditions of the recipient's public  
15 assistance, including retaliation in any form or manner because:

16       (1) The recipient involved is, or is perceived to be, a  
17           victim of domestic or sexual violence;

18       (2) The recipient attended, participated in, prepared for,  
19           or requested leave to attend, participate in, or  
20           prepare for, a criminal or civil court proceeding  
21           relating to an incident of domestic or sexual violence



1 of which the recipient, or the family or household  
2 member of the recipient, was a victim;

3 (3) The recipient, in response to actual or threatened  
4 domestic or sexual violence, requested that a  
5 reasonable safety procedure or modification to enhance  
6 the security of the recipient be implemented; or

7 (4) The workplace of the recipient is disrupted or  
8 threatened by the action of a person whom the  
9 recipient states has committed or threatened to commit  
10 domestic or sexual violence against the recipient, or  
11 against the recipient's family or household member.

12 (5) The recipient exercised any right provided by, or  
13 opposed any practice made unlawful under, section 378-  
14 72.

15 §346-B Public assistance; domestic violence training;

16 notification. (a) The department shall adopt rules in  
17 accordance with chapter 91 to ensure that:

18 (1) Applicants for assistance through a family assistance  
19 program administered under Section 402 of the Social  
20 Security Act and individuals inquiring about such  
21 assistance are adequately notified of:



- 1           (A) The availability of unemployment compensation for  
2           victims of domestic or sexual violence as  
3           provided in section 383-7.6;
- 4           (B) Provisions allowing for a leave of absence from  
5           employment for victims of domestic or sexual  
6           violence as provided in part VI of chapter 378;
- 7           (C) The availability of nonrecurrent short-term  
8           emergency benefits available to individuals for a  
9           period of leave taken pursuant to part VI of  
10           chapter 378 as provided in section 378- ; and
- 11           (D) Insurance protections for victims of domestic or  
12           sexual violence as provided in sections 431:10-  
13           217.5, 432:1-101.6, 432:2-103.5, 432D-27, and  
14           432E- ; and
- 15        (2) Case workers and other agency personnel responsible  
16        for administering the State public assistance program  
17        funded under Section 402 of the Social Security Act  
18        are adequately trained in:
  - 19           (A) The nature and dynamics of domestic or sexual  
20           violence, and how to identify such cases;





1           (B) State standards and procedures relating to the  
 2           prevention of, and assistance for individuals who  
 3           experience, domestic or sexual violence; and  
 4           (C) Methods of ascertaining and keeping confidential  
 5           information about possible experiences of  
 6           domestic or sexual violence."

PART V INSURANCE

8           SECTION 17. Chapter 431, Hawaii Revised Statutes, is  
 9 amended by adding a new section to be appropriately designated  
 10 and to read as follows:

11           "§431- Policies relating to domestic abuse cases;  
 12 enforcement. (a) Any act or practice prohibited by section  
 13 431:10-217.5 shall be enforceable by the same means and with the  
 14 same jurisdiction, powers, and duties as under section 431:2-  
 15 203.

16           (b) An applicant or insured who believes that they have  
 17 been adversely affected by an act or practice of an insurer in  
 18 violation of section 431:10-217.5 may maintain a private cause  
 19 of action against the insurer in a Federal or State court of  
 20 original jurisdiction. Upon proof of such conduct by a  
 21 preponderance of the evidence, the court may award appropriate  
 22 relief, including temporary, preliminary, and permanent



1 injunctive relief and compensatory and punitive damages, as well  
2 as the costs of suit and reasonable fees for the aggrieved  
3 individual's attorneys and expert witnesses.

4 (c) With respect to compensatory damages in an action  
5 described in subsection (b), the aggrieved individual may elect,  
6 at any time prior to the rendering of final judgment, to recover  
7 in lieu of actual damages, an award of statutory damages in the  
8 amount of \$5,000 for each violation."

9 SECTION 18. Chapter 432E, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§432E- Domestic abuse; prohibition on termination. (a)  
13 No managed care plan may terminate health coverage for a subject  
14 of domestic abuse because coverage was originally issued in the  
15 name of the abuser and the abuser has divorced, separated from,  
16 or lost custody of the subject of domestic abuse, or the  
17 abuser's coverage has terminated voluntarily or involuntarily  
18 and the subject of domestic abuse does not qualify for an  
19 extension of coverage under Part 6 of Subtitle B of Title I of  
20 the Employee Retirement Income Security Act of 1974, 29 U.S.C.  
21 1161 et seq. or Section 4980B of the Internal Revenue Code of  
22 1986.



1           (b) Nothing in subsection (a) shall be construed to  
2 prohibit the managed care plan from requiring that the subject  
3 of domestic abuse pay the full premium for the subject's  
4 coverage under the health plan if the requirements are applied  
5 to all insured of the managed care plan.

6           (c) A managed care plan may terminate group coverage to  
7 which this section applies after the continuation coverage  
8 period required by this section has been in force for eighteen  
9 months if it offers conversion to an equivalent individual plan.

10           (d) The continuation of health coverage required by this  
11 section shall be satisfied by any extension of coverage under  
12 Part 6 of Subtitle B of Title I of the Employee Retirement  
13 Income Security Act of 1974, 29 U.S.C. 1161 et seq. or Section  
14 4980B of the Internal Revenue Code of 1986 provided to a subject  
15 of domestic abuse and is not intended to be in addition to any  
16 extension of coverage otherwise provided for under such part 6  
17 or Section 4980B.

18           (e) As used in this section:

19           "Domestic abuse" means the occurrence of one or more of the  
20 following acts by a current or former household or family  
21 member, intimate partner, or caretaker:



- 1        (1) Attempting to cause or causing another person bodily  
2        injury, physical harm, substantial emotional distress,  
3        or psychological trauma;
- 4        (2) Attempting to engage or engaging in any conduct  
5        proscribed by chapter 707, part V;
- 6        (3) Engaging in a course of conduct or repeatedly  
7        committing acts toward another person, including  
8        following the person without proper authority and  
9        under circumstances that place the person in  
10       reasonable fear of bodily injury or physical harm;
- 11       (4) Subjecting another person to unlawful imprisonment or  
12       kidnapping; or
- 13       (5) Attempting to cause or causing damage to property to  
14       intimidate or attempt to control the behavior of  
15       another person.

16       "Subject of domestic abuse" means:

- 17       (1) A person against whom an act of domestic abuse has  
18       been directed;
- 19       (2) A person who has prior or current injuries, illnesses,  
20       or disorders that resulted from domestic abuse; or
- 21       (3) A person who seeks, may have sought, or had reason to  
22       seek medical or psychological treatment for domestic



1            abuse, protection, court-ordered protection, or  
2            shelter from domestic abuse."

3            SECTION 19. Section 431:10-217.5, Hawaii Revised Statutes,  
4 is amended to read as follows:

5            "[~~§~~431:10-217.5[~~]~~] Policies relating to domestic abuse  
6 cases. (a) No insurer shall deny or refuse to accept an  
7 application for insurance, refuse to insure, refuse to renew,  
8 cancel, restrict, or otherwise terminate a policy of insurance,  
9 or charge a different rate for the same coverage, on the basis  
10 that the applicant or insured person is, has been, or may be a  
11 [~~victim of domestic abuse.~~] subject of domestic abuse.

12            (b) Nothing in this section shall prevent an insurer from  
13 taking any of the actions set forth in subsection (a) on the  
14 basis of loss history or medical condition, or for any other  
15 reason not otherwise prohibited by this section, any law,  
16 regulation, or rule.

17            (c) Any form filed or filed after July 15, 1998 or subject  
18 to a rule adopted under chapter 91 may exclude coverage for  
19 losses caused by intentional or fraudulent acts of any insured.  
20 Such an exclusion, however, shall not apply to deny, or limit  
21 payment of, either directly or indirectly, an insured's  
22 otherwise-covered property loss if:



- 1           (1) The property loss is caused by an act of domestic  
2           abuse [~~by another insured under the policy~~];
- 3           (2) The insured claiming property loss files a police  
4           report and cooperates with any law enforcement  
5           investigation relating to the act of domestic abuse;  
6           and
- 7           (3) The insured claiming property loss did not cooperate  
8           in or contribute to the creation of the property loss.

9           ~~[Payment by the insurer to an insured may be limited to the~~  
10          ~~person's insurable interest in the property less payments made~~  
11          ~~to a mortgagee or other party with a legal secured interest in~~  
12          ~~the property. An insurer making payment to an insured under~~  
13          ~~this section has all rights of subrogation to recover against~~  
14          ~~the perpetrator of the act that caused the loss.]~~ Subrogation  
15          of claims resulting from domestic abuse is prohibited without  
16          the informed consent of the subject of domestic abuse.

17           (d) Nothing in this section prohibits an insurer from  
18          investigating a claim and complying with chapter 431.

19           ~~[(e) As used in this section, "domestic abuse" means:~~

- 20           ~~(1) Physical harm, bodily injury, assault, or the~~  
21           ~~infliction of fear of imminent physical harm, bodily~~



1 ~~injury, or assault between family or household~~  
2 ~~members;~~  
3 ~~(2) Sexual assault of one family or household member by~~  
4 ~~another;~~  
5 ~~(3) Stalking of one family or household member by another~~  
6 ~~family or household member; or~~  
7 ~~(4) Intentionally, knowingly, or recklessly causing damage~~  
8 ~~to property so as to intimidate or attempt to control the~~  
9 ~~behavior of another household member.]~~

10 (e) To protect the safety and privacy of subjects of  
11 domestic abuse, no person employed by or contracting with an  
12 insurer may, without the consent of the subject of domestic  
13 abuse:

14 (1) Use, disclose, or transfer information relating to  
15 domestic abuse status, acts of domestic abuse,  
16 domestic abuse-related medical conditions, or the  
17 applicant's or insured's status as a family member,  
18 employer, associate, or person in a relationship with  
19 a subject of domestic abuse for any purpose unrelated  
20 to the direct provision of health care services unless  
21 such use, disclosure, or transfer is required by an  
22 order of an entity with authority to regulate



1           insurance or an order of a court of competent

2           jurisdiction; or

3           (2) Disclose or transfer information relating to an  
4           applicant's or insured's mailing address and telephone  
5           number of a shelter for subjects of domestic abuse,  
6           unless such disclosure or transfer:

7           (A) Is required to provide insurance coverage; and

8           (B) Does not have the potential to endanger the  
9           safety of a subject of domestic abuse.

10          Nothing in this subsection shall be construed to limit or  
11          preclude a subject of domestic abuse from obtaining the  
12          subject's own insurance records from an insurer.

13          (f) A subject of domestic abuse, at the subject's absolute  
14          discretion, may provide evidence of domestic abuse to an insurer  
15          for the limited purpose of facilitating treatment of a domestic  
16          abuse-related condition or demonstrating that a condition is  
17          domestic abuse-related. Nothing in this subsection shall be  
18          construed as authorizing an insurer to disregard such evidence.

19          (g) Insurers shall develop and adhere to written policies  
20          specifying procedures to be followed by employees, contractors,  
21          producers, agents, and brokers to protect the safety and privacy  
22          of a subject of domestic abuse and otherwise implement this





1 section when taking an application, investigating a claim, or  
2 taking any other action relating to a policy or claim involving  
3 a subject of domestic abuse.

4 (h) An insurer that takes an action that adversely affects  
5 a subject of domestic abuse shall advise the applicant or  
6 insured who is the subject of domestic abuse of the specific  
7 reasons for the action in writing. For purposes of this  
8 section, reference to general underwriting practices or  
9 guidelines shall not constitute a specific reason.

10 (i) Nothing in this section shall be construed to prohibit  
11 a life insurer from declining to issue a life insurance policy  
12 if the applicant or prospective owner of the policy is or would  
13 be designated as a beneficiary of the policy, and if:

14 (1) The applicant or prospective owner of the policy lacks  
15 an insurable interest in the insured; or

16 (2) The applicant or prospective owner of the policy is  
17 known, on the basis of police or court records, to  
18 have committed an act of domestic abuse against the  
19 proposed insured.

20 (j) As used in this section:



1           "Domestic abuse" means the occurrence of one or more of  
2 the following acts by a current or former household or family  
3 member, intimate partner, or caretaker:

4           (1) Attempting to cause or causing another person bodily  
5 injury, physical harm, substantial emotional distress,  
6 or psychological trauma;

7           (2) Attempting to engage or engaging in any conduct  
8 proscribed by chapter 707, part V;

9           (3) Engaging in a course of conduct or repeatedly  
10 committing acts toward another person, including  
11 following the person without proper authority and  
12 under circumstances that place the person in  
13 reasonable fear of bodily injury or physical harm;

14           (4) Subjecting another person to unlawful imprisonment or  
15 kidnapping; or

16           (5) Attempting to cause or causing damage to property to  
17 intimidate or attempt to control the behavior of  
18 another person.

19           "Subject of domestic abuse" means:

20           (1) A person against whom an act of domestic abuse has  
21 been directed;



- 1       (2) A person who has prior or current injuries, illnesses,
- 2             or disorders that resulted from domestic abuse; or
- 3       (3) A person who seeks, may have sought, or had reason to
- 4             seek medical or psychological treatment for domestic
- 5             abuse, protection, court-ordered protection, or
- 6             shelter from domestic abuse."

7           SECTION 20. Section 432:1-101.6, Hawaii Revised Statutes,  
8 is amended to read as follows:

9           "**§432:1-101.6 Policies relating to domestic abuse cases.**

10       (a) No mutual benefit society shall deny or refuse to accept an  
11 application for insurance, refuse to insure, refuse to renew,  
12 cancel, restrict, or otherwise terminate a policy of insurance,  
13 or charge a different rate for the same coverage, on the basis  
14 that the member or prospective member is, has been, or may be a  
15 ~~[victim of domestic abuse]~~ subject of domestic abuse.

16       (b) Nothing in this section shall prevent a mutual benefit  
17 society from taking any of the actions set forth in subsection

18       (a) on the basis of loss history or medical condition, or for  
19 any other reason not otherwise prohibited by this section or any  
20 other law, regulation, or rule.

21       (c) Any form filed or filed after July 15, 1998 or subject  
22 to a rule adopted under chapter 91 may exclude coverage for



1 losses caused by intentional or fraudulent acts of any member of  
2 the society.

3 (d) Nothing in this section prohibits a mutual benefit  
4 society from investigating a claim and complying with chapter  
5 432.

6 [~~(e) As used in this section, "domestic abuse" means:~~

7 ~~(1) Physical harm, bodily injury, assault, or the~~  
8 ~~infliction of fear of imminent physical harm, bodily~~  
9 ~~injury, or assault between family or household~~  
10 ~~members;~~

11 ~~(2) Sexual assault of one family or household member by~~  
12 ~~another;~~

13 ~~(3) Stalking of one family or household member by another~~  
14 ~~family or household member; or~~

15 ~~(4) Intentionally, knowingly, or recklessly causing damage~~  
16 ~~to property so as to intimidate or attempt to control~~  
17 ~~the behavior of another household member.]~~

18 (e) To protect the safety and privacy of subjects of  
19 domestic abuse, no person employed by or contracting with a  
20 mutual benefit society may, without the consent of the subject  
21 of domestic abuse:



1       (1) Use, disclose, or transfer information relating to  
2       domestic abuse status, acts of domestic abuse,  
3       domestic abuse-related medical conditions, or the  
4       prospective member's or member's status as a family  
5       member, employer, associate, or person in a  
6       relationship with a subject of domestic abuse for any  
7       purpose unrelated to the direct provision of health  
8       care services unless such use, disclosure, or transfer  
9       is required by an order of an entity with authority to  
10       regulate insurance or an order of a court of competent  
11       jurisdiction; or

12       (2) Disclose or transfer information relating to a  
13       prospective member's or member's mailing address and  
14       telephone number of a shelter for subjects of domestic  
15       abuse, unless such disclosure or transfer:

16       (A) Is required to provide insurance coverage; and

17       (B) Does not have the potential to endanger the  
18       safety of a subject of domestic abuse.

19       Nothing in this subsection shall be construed to limit or  
20       preclude a subject of domestic abuse from obtaining the  
21       subject's own insurance records from a mutual benefit society.



1       (f) A subject of domestic abuse, at the subject's absolute  
2 discretion, may provide evidence of domestic abuse to a mutual  
3 benefit society for the limited purpose of facilitating  
4 treatment of a domestic abuse-related condition or demonstrating  
5 that a condition is domestic abuse-related. Nothing in this  
6 subsection shall be construed as authorizing a mutual benefit  
7 society to disregard such evidence.

8       (g) Mutual benefit societies shall develop and adhere to  
9 written policies specifying procedures to be followed by  
10 employees, contractors, producers, agents, and brokers to  
11 protect the safety and privacy of a subject of domestic abuse  
12 and otherwise implement this section when taking an application,  
13 investigating a claim, or taking any other action relating to a  
14 policy or claim involving a subject of domestic abuse.

15       (h) A mutual benefit society that takes an action that  
16 adversely affects a subject of domestic abuse shall advise the  
17 prospective member or member who is the subject of domestic  
18 abuse of the specific reasons for the action in writing. For  
19 purposes of this section, reference to general underwriting  
20 practices or guidelines shall not constitute a specific reason.

21       (i) Nothing in this section shall be construed to prohibit  
22 a life insurer from declining to issue a life insurance policy



1 if the applicant or prospective owner of the policy is or would  
2 be designated as a beneficiary of the policy, and if:

3 (1) The applicant or prospective owner of the policy lacks  
4 an insurable interest in the insured; or

5 (2) The applicant or prospective owner of the policy is  
6 known, on the basis of police or court records, to  
7 have committed an act of domestic abuse against the  
8 proposed insured.

9 (j) As used in this section:

10 "Domestic abuse" means the occurrence of one or more of  
11 the following acts by a current or former household or family  
12 member, intimate partner, or caretaker:

13 (1) Attempting to cause or causing another person bodily  
14 injury, physical harm, substantial emotional distress,  
15 or psychological trauma;

16 (2) Attempting to engage or engaging in any conduct  
17 proscribed by chapter 707, part V;

18 (3) Engaging in a course of conduct or repeatedly  
19 committing acts toward another person, including  
20 following the person without proper authority and  
21 under circumstances that place the person in  
22 reasonable fear of bodily injury or physical harm;



- 1        (4) Subjecting another person to unlawful imprisonment or
- 2        kidnapping; or
- 3        (5) Attempting to cause or causing damage to property to
- 4        intimidate or attempt to control the behavior of
- 5        another person.

6        "Subject of domestic abuse" means:

- 7        (1) A person against whom an act of domestic abuse has
- 8        been directed;
- 9        (2) A person who has prior or current injuries, illnesses,
- 10       or disorders that resulted from domestic abuse; or
- 11       (3) A person who seeks, may have sought, or had reason to
- 12       seek medical or psychological treatment for domestic
- 13       abuse, protection, court-ordered protection, or
- 14       shelter from domestic abuse."

15       SECTION 21. Section 432:2-103.5, Hawaii Revised Statutes,  
16 is amended to read as follows:

17       **"§432:2-103.5 Policies relating to domestic abuse cases.**

- 18       (a) No fraternal benefit society shall deny or refuse to accept
- 19       an application for insurance, refuse to insure, refuse to renew,
- 20       cancel, restrict, or otherwise terminate a policy of insurance,
- 21       or charge a different rate for the same coverage, on the basis





1 that the member or prospective member is, has been, or may be a  
2 ~~[victim of domestic abuse]~~ subject of domestic abuse.

3 (b) Nothing in this section shall prevent a fraternal  
4 benefit society from taking any of the actions set forth in  
5 subsection (a) on the basis of loss history or medical  
6 condition, or for any other reason not otherwise prohibited by  
7 this section or any other law, regulation, or rule.

8 (c) Any form filed or filed after July 15, 1998 or subject  
9 to a rule adopted under chapter 91 may exclude coverage for  
10 losses caused by intentional or fraudulent acts of any benefit  
11 member.

12 (d) Nothing in this section prohibits a fraternal benefit  
13 society from investigating a claim and complying with chapter  
14 431.

15 ~~[(e) As used in this section, "domestic abuse" means:~~

16 ~~(1) Physical harm, bodily injury, assault, or the~~  
17 ~~infliction of fear of imminent physical harm, bodily~~  
18 ~~injury, or assault between family or household~~  
19 ~~members;~~

20 ~~(2) Sexual assault of one family or household member by~~  
21 ~~another;~~



- 1       ~~(3) Stalking of one family or household member by another~~
- 2           ~~family or household member; or~~
- 3       ~~(4) Intentionally, knowingly, or recklessly causing damage~~
- 4           ~~to property so as to intimidate or attempt to control~~
- 5           ~~the behavior of another household member.]~~

6       (e) To protect the safety and privacy of subjects of  
7 domestic abuse, no person employed by or contracting with a  
8 fraternal benefit society may, without the consent of the  
9 subject of domestic abuse:

10       (1) Use, disclose, or transfer information relating to  
11 domestic abuse status, acts of domestic abuse,  
12 domestic abuse-related medical conditions, or the  
13 prospective member's or member's status as a family  
14 member, employer, associate, or person in a  
15 relationship with a subject of domestic abuse for any  
16 purpose unrelated to the direct provision of health  
17 care services unless such use, disclosure, or transfer  
18 is required by an order of an entity with authority to  
19 regulate insurance or an order of a court of competent  
20 jurisdiction; or

21       (2) Disclose or transfer information relating to a  
22 prospective member's or member's mailing address and



1 telephone number of a shelter for subjects of domestic  
2 abuse, unless such disclosure or transfer:

3 (A) Is required to provide insurance coverage; and

4 (B) Does not have the potential to endanger the  
5 safety of a subject of domestic abuse.

6 Nothing in this subsection shall be construed to limit or  
7 preclude a subject of domestic abuse from obtaining the  
8 subject's own insurance records from a fraternal benefit  
9 society.

10 (f) A subject of domestic abuse, at the subject's absolute  
11 discretion, may provide evidence of domestic abuse to a  
12 fraternal benefit society for the limited purpose of  
13 facilitating treatment of a domestic abuse-related condition or  
14 demonstrating that a condition is domestic abuse-related.

15 Nothing in this subsection shall be construed as authorizing a  
16 fraternal benefit society to disregard such evidence.

17 (g) Fraternal benefit societies shall develop and adhere  
18 to written policies specifying procedures to be followed by  
19 employees, contractors, producers, agents, and brokers to  
20 protect the safety and privacy of a subject of domestic abuse  
21 and otherwise implement this section when taking an application,



1 investigating a claim, or taking any other action relating to a  
2 policy or claim involving a subject of domestic abuse.

3 (h) A fraternal benefit society that takes an action that  
4 adversely affects a subject of domestic abuse shall advise the  
5 prospective member or member who is the subject of domestic  
6 abuse of the specific reasons for the action in writing. For  
7 purposes of this section, reference to general underwriting  
8 practices or guidelines shall not constitute a specific reason.

9 (i) Nothing in this section shall be construed to prohibit  
10 a life insurer from declining to issue a life insurance policy  
11 if the applicant or prospective owner of the policy is or would  
12 be designated as a beneficiary of the policy, and if:

13 (1) The applicant or prospective owner of the policy lacks  
14 an insurable interest in the insured; or

15 (2) The applicant or prospective owner of the policy is  
16 known, on the basis of police or court records, to  
17 have committed an act of domestic abuse against the  
18 proposed insured."

19 (j) As used in this section:

20 "Domestic abuse" means the occurrence of one or more of  
21 the following acts by a current or former household or family  
22 member, intimate partner, or caretaker:



- 1        (1) Attempting to cause or causing another person bodily  
2        injury, physical harm, substantial emotional distress,  
3        or psychological trauma;
- 4        (2) Attempting to engage or engaging in any conduct  
5        proscribed by chapter 707, part V;
- 6        (3) Engaging in a course of conduct or repeatedly  
7        committing acts toward another person, including  
8        following the person without proper authority and  
9        under circumstances that place the person in  
10       reasonable fear of bodily injury or physical harm;
- 11       (4) Subjecting another person to unlawful imprisonment or  
12       kidnapping; or
- 13       (5) Attempting to cause or causing damage to property so  
14       as to intimidate or attempt to control the behavior of  
15       another person.

16       "Subject of domestic abuse" means:

- 17       (1) A person against whom an act of domestic abuse has  
18       been directed;
- 19       (2) A person who has prior or current injuries, illnesses,  
20       or disorders that resulted from domestic abuse; or
- 21       (3) A person who seeks, may have sought, or had reason to  
22       seek medical or psychological treatment for domestic



1            abuse, protection, court-ordered protection, or  
2            shelter from domestic abuse."

3            SECTION 22. Section 432D-27, Hawaii Revised Statutes, is  
4 amended to read as follows:

5            "§432D-27 Policies relating to domestic abuse cases. (a)

6 No health maintenance organization shall deny or refuse to  
7 accept an application for insurance, refuse to insure, refuse to  
8 renew, cancel, restrict, or otherwise terminate a policy of  
9 insurance, or charge a different rate for the same coverage, on  
10 the basis that the applicant or enrollee is, has been, or may be  
11 a [~~victim of domestic abuse~~] subject of domestic abuse.

12            (b) Nothing in this section shall prevent a health  
13 maintenance organization from taking any of the actions set  
14 forth in subsection (a) on the basis of loss history or medical  
15 condition, or for any other reason not otherwise prohibited by  
16 this section or any other law, regulation, or rule.

17            (c) Any form filed or filed after July 15, 1998 or subject  
18 to a rule adopted under chapter 91 may exclude coverage for  
19 losses caused by intentional or fraudulent acts of any enrollee.

20            (d) Nothing in this section prohibits a health maintenance  
21 organization from investigating a claim and complying with  
22 chapter 432D.



- 1       ~~[(e) As used in this section, "domestic abuse" means:~~
- 2       ~~(1) Physical harm, bodily injury, assault, or the~~
- 3       ~~infliction of fear of imminent physical harm, bodily~~
- 4       ~~injury, or assault between family or household~~
- 5       ~~members;~~
- 6       ~~(2) Sexual assault of one family or household member by~~
- 7       ~~another;~~
- 8       ~~(3) Stalking of one family or household member by another~~
- 9       ~~family or household member; or~~
- 10       ~~(4) Intentionally, knowingly, or recklessly causing damage~~
- 11       ~~to property so as to intimidate or attempt to control~~
- 12       ~~the behavior of another household member.]~~

13       (e) To protect the safety and privacy of subjects of

14       domestic abuse, no person employed by or contracting with a

15       health maintenance organization may, without the consent of the

16       subject of domestic abuse:

- 17       (1) Use, disclose, or transfer information relating to
- 18       domestic abuse status, acts of domestic abuse,
- 19       domestic abuse-related medical conditions, or the
- 20       applicant's or enrollee's status as a family member,
- 21       employer, associate, or person in a relationship with
- 22       a subject of domestic abuse for any purpose unrelated



1 to the direct provision of health care services unless  
2 such use, disclosure, or transfer is required by an  
3 order of an entity with authority to regulate  
4 insurance or an order of a court of competent  
5 jurisdiction; or

6 (2) Disclose or transfer information relating to an  
7 applicant's or insured's mailing address and telephone  
8 number of a shelter for subjects of domestic abuse,  
9 unless such disclosure or transfer:

10 (A) Is required to provide insurance coverage; and

11 (B) Does not have the potential to endanger the  
12 safety of a subject of domestic abuse.

13 Nothing in this subsection shall be construed to limit or  
14 preclude a subject of domestic abuse from obtaining the  
15 subject's own insurance records from a health maintenance  
16 organization.

17 (f) A subject of domestic abuse, at the subject's absolute  
18 discretion, may provide evidence of domestic abuse to a health  
19 maintenance organization for the limited purpose of facilitating  
20 treatment of a domestic abuse-related condition or demonstrating  
21 that a condition is domestic abuse-related. Nothing in this





1 subsection shall be construed as authorizing a health  
2 maintenance organization to disregard such evidence.

3 (g) Health maintenance organizations shall develop and  
4 adhere to written policies specifying procedures to be followed  
5 by employees, contractors, producers, agents, and brokers to  
6 protect the safety and privacy of a subject of domestic abuse  
7 and otherwise implement this section when taking an application,  
8 investigating a claim, or taking any other action relating to a  
9 policy or claim involving a subject of domestic abuse.

10 (h) A health maintenance organization that takes an action  
11 that adversely affects a subject of domestic abuse shall advise  
12 the applicant or enrollee who is the subject of domestic abuse  
13 of the specific reasons for the action in writing. For purposes  
14 of this section, reference to general underwriting practices or  
15 guidelines shall not constitute a specific reason.

16 (i) As used in this section:

17 "Domestic abuse" means the occurrence of one or more of  
18 the following acts by a current or former household or family  
19 member, intimate partner, or caretaker:

20 (1) Attempting to cause or causing another person bodily  
21 injury, physical harm, substantial emotional distress,  
22 or psychological trauma;



- 1        (2) Attempting to engage or engaging in any conduct
- 2                proscribed by chapter 707, part V;
- 3        (3) Engaging in a course of conduct or repeatedly
- 4                committing acts toward another person, including
- 5                following the person without proper authority and
- 6                under circumstances that place the person in
- 7                reasonable fear of bodily injury or physical harm;
- 8        (4) Subjecting another person to unlawful imprisonment or
- 9                kidnapping; or
- 10       (5) Attempting to cause or causing damage to property to
- 11               intimidate or attempt to control the behavior of
- 12               another person.

13       "Subject of domestic abuse" means:

- 14       (1) A person against whom an act of domestic abuse has
- 15               been directed;
- 16       (2) A person who has prior or current injuries, illnesses,
- 17               or disorders that resulted from domestic abuse; or
- 18       (3) A person who seeks, may have sought, or had reason to
- 19               seek medical or psychological treatment for domestic
- 20               abuse, protection, court-ordered protection, or
- 21               shelter from domestic abuse."



1 PART VI MISCELLANEOUS

2 SECTION 23. If any provision of this Act, or the  
3 application thereof to any person or circumstance is held  
4 invalid, the invalidity does not affect other provisions or  
5 applications of the Act, which can be given effect without the  
6 invalid provision or application, and to this end the provisions  
7 of this Act are severable.

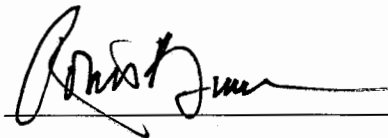
8 SECTION 24. In codifying the new sections added by section  
9 13 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12 SECTION 25. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 26. This Act shall take effect on July 1, 2010.

15

INTRODUCED BY:



**Report Title:**

Domestic Violence Omnibus

**Description:**

Provides emergency, nonrecurring benefits for victims of domestic or sexual violence and expands current provisions for unemployment insurance, emergency leaves of absence, and insurance protections.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

