
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; [ø]

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,



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 " ~~[+]§378-72[+]~~ 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 [~~(c) 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 ~~[(c) 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: *John M. Reno*
Hal Wood
Tom Brown
David
JAN 21 2010



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.

