



GOV. MSG. NO. **1249**

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 20, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

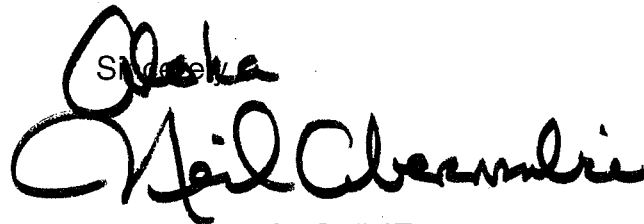
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 20, 2011, the following bill was signed into law:

HB141 HD1 SD1 CD1

RELATING TO THE HAWAII PENAL CODE  
**Act 146 (11)**



NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO THE HAWAII PENAL CODE.

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

1 SECTION 1. Chapter 707, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4 **"PART . LABOR TRAFFICKING**

5 **§707-A Definitions.** As used in this part:

6 "Deadly force" has the same meaning as in section 703-300.

7 "Force" has the same meaning as in section 703-300.

8 "Labor" means work of economic or financial value.

9 Prostitution-related and obscenity-related activities as set  
10 forth in chapter 712 are not forms of "labor" under this part.

11 "Services" means a relationship between a person and the  
12 actor in which the person performs activities under the  
13 supervision of or for the benefit of the actor, or a third party.

14 Prostitution-related and obscenity-related activities as set  
15 forth in chapter 712 are not forms of "services" under this  
16 part.

17 "Unlawful force" has the same meaning as in section  
18 703-300.



1 "Venture" means a business relationship between two or more  
2 parties to undertake economic activity together.

3 "Victim" means the person against whom an offense specified  
4 in section 707-B or 707-C has been committed.

5 **§707-B Labor trafficking in the first degree.** (1) A  
6 person commits the offense of labor trafficking in the first  
7 degree if the person intentionally or knowingly provides or  
8 obtains, or attempts to provide or obtain, another person for  
9 labor or services by any of the following means committed  
10 against the other person:

11 (a) Any of the acts constituting extortion as described in  
12 section 707-764, except that for purposes of this  
13 paragraph "labor" and "services" shall be as defined  
14 in section 707-A;

15 (b) The acts constituting kidnapping as described in  
16 section 707-720(1)(a) through (g), except that for  
17 purposes of this paragraph "labor" and "services"  
18 shall be as defined in section 707-A;

19 (c) The acts described in section 707-721(1) or 707-722,  
20 relating to unlawful imprisonment;



- 1 (d) The acts described in section 707-730, 707-731, or  
2 707-732, relating to sexual assault in the first,  
3 second, or third degree;
- 4 (e) Force, deadly force, or unlawful force;
- 5 (f) The acts described in the definition of deception  
6 pursuant to section 708-800, or fraud, which means  
7 making material false statements, misstatements, or  
8 omissions to induce or maintain the person to engage  
9 or continue to engage in the labor or services;
- 10 (g) Requiring that labor or services be performed to  
11 retire, repay, or service a real or purported debt, if  
12 performing the labor or services is the exclusive  
13 method allowed to retire, repay, or service the debt  
14 and the indebted person is required to repay the debt  
15 with direct labor in place of currency; provided that  
16 this shall not include labor or services performed by  
17 a child for the child's parent or guardian;
- 18 (h) The acts described in either section 707-710, 707-711,  
19 or 707-712, relating to assault;
- 20 (i) Withholding any of the person's government-issued  
21 identification documents with the intent to impede the  
22 movement of the person;



1 (j) Using any scheme, plan, or pattern intended to cause  
2 the person to believe that if the person did not  
3 perform the labor or services, then the person or a  
4 friend or a member of the person's family would suffer  
5 serious harm, serious financial loss, or physical  
6 restraint; or

7 (k) Using or threatening to use any form of domination,  
8 restraint, or control over the person which, given the  
9 totality of the circumstances, would have the  
10 reasonably foreseeable effect of causing the person to  
11 engage in or to remain engaged in the labor or  
12 services.

13 (2) Labor trafficking in the first degree is a class A  
14 felony.

15 **§707-C Labor trafficking in the second degree.** (1) A  
16 person commits the offense of labor trafficking in the second  
17 degree if the person knowingly:

18 (a) Acts as an individual or uses a licensed business or  
19 business enterprise to aid another in a venture  
20 knowing that the other person in that venture is  
21 committing the offense of labor trafficking in the  
22 first degree; or



1 (b) Benefits, financially or by receiving something of  
2 value, from participation in a venture knowing or in  
3 reckless disregard of the fact that another person has  
4 engaged in any act described in paragraph (a) in the  
5 course of that venture or that another person in that  
6 venture is committing the offense of labor trafficking  
7 in the first degree.

8 (2) Labor trafficking in the second degree is a class B  
9 felony; provided that if a violation of subsection (1) involves  
10 kidnapping or an attempt to kidnap, sexual assault in the first,  
11 second, or third degree, or the attempt to commit sexual assault  
12 in the first, second, or third degree, or an attempt to cause  
13 the death of a person, or if a death results, the offense shall  
14 be a class A felony.

15 (3) Upon conviction of a defendant for an offense under  
16 subsection (1), the court shall also order that any and all  
17 business licenses issued by the State be revoked for the  
18 business or enterprise that the defendant used to aid in the  
19 offense of labor trafficking in the second degree; provided that  
20 the court, in its discretion, may reinstate a business license  
21 upon petition to the court by any remaining owner or partner of



1 the business or enterprise who was not convicted of an offense  
2 under this section or section 707-B.

3 **§707-D Additional sentencing considerations; victims held**  
4 **in servitude.** In addition to the factors set forth in sections  
5 706-606 and 706-621, when determining the particular sentence to  
6 be imposed on a defendant convicted under section 707-B or  
7 707-C, the court shall consider:

8 (a) The time for which the victim was held in servitude;  
9 and

10 (b) The number of victims involved in the offense for  
11 which the defendant is convicted.

12 **§707-E Extended terms of imprisonment; labor trafficking**  
13 **offenses.** If a person is found guilty of a violation under  
14 section 707-B or 707-C and the victim of the offense suffered  
15 bodily injury, the person may be sentenced to an extended  
16 indeterminate term of imprisonment as described in this section.  
17 Subject to the procedures set forth in section 706-664, the  
18 court may impose, in addition to the indeterminate term of  
19 imprisonment provided for the grade of offense, an additional  
20 indeterminate term of imprisonment as follows:

21 (a) Bodily injury - an additional two years of  
22 imprisonment;



- 1 (b) Substantial bodily injury - an additional five years  
2 of imprisonment;
- 3 (c) Serious bodily injury - an additional fifteen years of  
4 imprisonment; or
- 5 (d) If death results, the defendant shall be sentenced in  
6 accordance with the homicide statute relevant for the  
7 level of criminal intent.

8 When ordering an extended term sentence, the court shall impose  
9 the maximum length of imprisonment. The minimum length of  
10 imprisonment for an extended term sentence under paragraph (a),  
11 (b), (c), or (d) shall be determined by the Hawaii paroling  
12 authority in accordance with section 706-669.

13 **§707-F Restitution for victims of labor trafficking. (1)**

14 In addition to any other penalty, and notwithstanding a victim's  
15 failure to request restitution under section 706-646(2), the  
16 court shall order restitution to be paid to the victim,  
17 consisting of an amount that is the greater of:

- 18 (a) The total gross income or value to the defendant of  
19 the victim's labor or services; or
- 20 (b) The value of the victim's labor or services, as  
21 guaranteed under the minimum wage provisions of  
22 chapter 387 or the Fair Labor Standards Act of 1938,





1 Public Law 75-718, Title 29 United States Code  
2 Sections 201 through 219, inclusive, whichever is  
3 greater.

4 (2) The return of the victim to the victim's home country  
5 or other absence of the victim from the jurisdiction shall not  
6 relieve the defendant of the defendant's restitution obligation.

7 **§707-G Nonpayment of wages.** (1) A person commits the  
8 offense of nonpayment of wages if the person, in the capacity as  
9 an employer of an employee, intentionally or knowingly or with  
10 intent to defraud fails or refuses to pay wages to the employee,  
11 except where required by federal or state statute or by court  
12 process. In addition to any other penalty, a person convicted  
13 of nonpayment of wages shall be fined not less than \$2,000 nor  
14 more than \$10,000 for each offense.

15 (2) Nonpayment of wages is:

16 (a) A class C felony, if the amount owed to the employee  
17 is equal to or greater than \$2,000 or if the defendant  
18 convicted of nonpayment of wages falsely denies the  
19 amount or validity of the wages owed; or

20 (b) A misdemeanor, if the amount owed to the employee is  
21 less than \$2,000.



1           (3) A person commits a separate offense under this section  
2 for each pay period during which the employee earned wages that  
3 the person failed or refused to pay the employee. If no set pay  
4 periods were agreed upon between the person and the employee at  
5 the time the employee commenced the work, then each "pay period"  
6 shall be deemed to be bi-weekly.

7           (4) In addition to any other penalty, the court shall  
8 order restitution to be paid to the employee, consisting of an  
9 amount that is the greater of:

10           (a) The wages earned by the employee that were unpaid by  
11 the person convicted of nonpayment of wages; or

12           (b) The value of the employee's labor or services, as  
13 guaranteed under the minimum wage provisions of  
14 chapter 387 or the Fair Labor Standards Act of 1938,  
15 Public Law 75-718, Title 29 United States Code  
16 Sections 201 through 219, inclusive, whichever is  
17 greater.

18           (5) An employee who is the victim of nonpayment of wages  
19 may bring a civil action to recover all wages owed by the  
20 defendant convicted of nonpayment of wages.

21           (6) For purposes of this section:



1 "Employee" means any person working for another for hire,  
2 including an individual employed in domestic service or at a  
3 family's or person's home, any individual employed by the  
4 individual's spouse, or by an independent contractor.

5 "Person" includes any individual, partnership, association,  
6 joint-stock company, trust, corporation, the personal  
7 representative of the estate of a deceased individual, or the  
8 receiver, trustee, or successor of any of the same, employing  
9 any persons, but shall not include the United States.

10 "Wages" means compensation for labor or services rendered  
11 by an employee, whether the amount is determined on a time,  
12 task, piece, commission, or other basis of calculation.

13 **§707-H Unlawful conduct with respect to documents.** (1) A  
14 person commits unlawful conduct with respect to documents if the  
15 person knowingly:

16 (a) Destroys, conceals, removes, confiscates, or possesses  
17 any actual or purported government identification  
18 document of another person:

19 (i) In the course of a violation or attempt to commit  
20 an offense under section 707-B or 707-C; or

21 (ii) To prevent or restrict, or in an attempt to  
22 prevent or restrict, without lawful authority,



1 the ability of the other person to move or travel  
2 in order to maintain the labor or services of the  
3 other person, when the person is or has been the  
4 victim of an offense under section 707-B or 707-  
5 C; or

6 (b) Destroys, conceals, removes, or confiscates any actual  
7 or purported government identification document of an  
8 employee.

9 (2) Unlawful conduct with respect to documents is a  
10 class C felony."

11 SECTION 2. Section 712A-4, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§712A-4 Covered offenses.** Offenses for which property is  
14 subject to forfeiture under this chapter are:

15 (a) All offenses [~~which~~] that specifically authorize  
16 forfeiture;

17 (b) Murder, kidnapping, labor trafficking, gambling,  
18 criminal property damage, robbery, bribery, extortion,  
19 theft, unauthorized entry into motor vehicle,  
20 burglary, money laundering, trademark counterfeiting,  
21 insurance fraud, promoting a dangerous, harmful, or  
22 detrimental drug, commercial promotion of marijuana,



1           [unlawful] methamphetamine trafficking, manufacturing  
2           of a controlled substance with a child present,  
3           promoting child abuse, or electronic enticement of a  
4           child [~~which~~] that is chargeable as a felony offense  
5           under state law;

6           (c) The manufacture, sale, or distribution of a controlled  
7           substance in violation of chapter 329, promoting  
8           detrimental drugs or intoxicating compounds, promoting  
9           pornography, promoting pornography for minors, or  
10          promoting prostitution, which is chargeable as a  
11          felony or misdemeanor offense, but not as a petty  
12          misdemeanor, under state law; and

13          (d) The attempt, conspiracy, solicitation, coercion, or  
14          intimidation of another to commit any offense for  
15          which property is subject to forfeiture."

16          SECTION 3. Section 803-44, Hawaii Revised Statutes, is  
17          amended to read as follows:

18          "**§803-44 Application for court order to intercept wire,**  
19          **oral, or electronic communications.** The attorney general of  
20          this State, or a designated deputy attorney general in the  
21          attorney general's absence or incapacity, or the prosecuting  
22          attorney of each county, or a designated deputy prosecuting



1 attorney in the prosecuting attorney's absence or incapacity,  
2 may make application to a designated judge or any other circuit  
3 court judge or district court judge, if a circuit court judge  
4 has not been designated by the chief justice of the Hawaii  
5 supreme court, or is otherwise unavailable, in the county where  
6 the interception is to take place, for an order authorizing or  
7 approving the interception of wire, oral, or electronic  
8 communications, and such court may grant in conformity with  
9 section 803-46 an order authorizing~~[7]~~ or approving the  
10 interception of wire, oral, or electronic communications by  
11 investigative or law enforcement officers having responsibility  
12 for the investigation of the offense as to which the application  
13 is made, if the interception might provide or has provided  
14 evidence of:

- 15 (1) Murder;
- 16 (2) Kidnapping;
- 17 (3) Labor trafficking in the first degree;
- 18 (4) Labor trafficking in the second degree;
- 19 ~~[(3)]~~ (5) Felony criminal property damage involving the  
20 danger of bodily injury as defined in section 707-700;
- 21 ~~[(4)]~~ (6) Distribution of dangerous, harmful, or  
22 detrimental drugs; or



- 1        [~~5~~] (7) Conspiracy to commit one or more of the above; or  
2            [~~involving~~  
3        ~~(6)~~ ~~Organized~~] (8) Involvement of organized crime and any  
4            of the following felony offenses:  
5            (A) Extortion;  
6            (B) Bribery of a juror, [~~ex-a~~] witness, or [~~ex-a~~]  
7                    police officer;  
8            (C) Receiving stolen property; [~~and~~]  
9            (D) Gambling; and  
10           (E) Money laundering."

11        SECTION 4. Section 842-1, Hawaii Revised Statutes, is  
12 amended by amending the definitions of "organized crime" and  
13 "racketeering activity" to read as follows:

14        "'Organized crime" means any combination or conspiracy to  
15 engage in criminal activity as a significant source of income or  
16 livelihood, or to violate, aid, or abet the violation of  
17 criminal laws relating to prostitution, gambling, loan sharking,  
18 drug abuse, illegal drug distribution, counterfeiting,  
19 extortion, labor trafficking, or corruption of law enforcement  
20 officers or other public officers or employers.

21        "Racketeering activity" means any act or threat  
22 involving [~~7~~] but not limited to murder, kidnapping, gambling,



1 criminal property damage, robbery, bribery, extortion, labor  
2 trafficking, theft, or prostitution, or any dealing in narcotic  
3 or other dangerous drugs [~~which~~] that is chargeable as a crime  
4 under state law and punishable by imprisonment for more than one  
5 year."

6 SECTION 5. The department of the attorney general shall  
7 submit a report regarding the implementation of this Act,  
8 including findings, recommendations, and any proposed  
9 legislation, to the legislature no later than twenty days prior  
10 to the convening of the regular session of 2014.

11 SECTION 6. In codifying the new sections added by  
12 section 1 of this Act, the revisor of statutes shall substitute  
13 appropriate section numbers for the letters used in designating  
14 the new sections in this Act.

15 SECTION 7. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 8. If any provision of this Act, or the  
19 application thereof to any person or circumstance is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the Act, which can be given effect without the





1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 9. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect on July 1, 2011.

APPROVED this 20 day of JUN, 2011

*Neil Abernethy*

GOVERNOR OF THE STATE OF HAWAII

