



GOV. MSG. NO. 1329

July 12, 2011

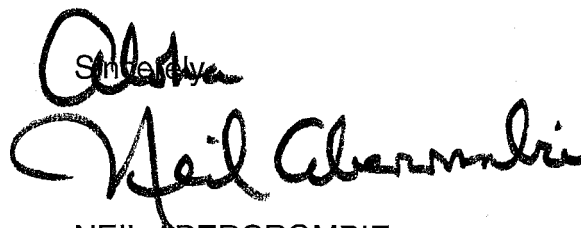
The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

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:

Re: SB946 SD1 HD1

On July 12, 2011, I intend to allow SB946 SD1 HD1, entitled "RELATING TO THE JUDICIARY." to become law as Act 225 (11) without my signature, pursuant to Section 16 of Article III of the State Constitution.



NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

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

1 SECTION 1. Chapter 634, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . ANONYMOUS FILINGS**

5 **§634- Anonymous filings.** (a) Upon petition to a court
6 under this section, the court may allow a petition, complaint,
7 motion, or other document to be filed by a party identifying the
8 parties as "jane doe" or "john doe"; provided that when deciding
9 to permit a "jane doe" or "john doe" filing, the court may
10 consider factors including:

- 11 (1) The severity of the petitioner's injury;
- 12 (2) The reasonableness of the petitioner's fears of
13 reprisal;
- 14 (3) The petitioner's vulnerability to retaliation from the
15 action;
- 16 (4) The risk of prejudice to the other party; and
- 17 (5) Whether the public interest would be served by
18 allowing the petitioner to remain anonymous.



1 (b) If there are compelling reasons sufficient to outweigh
2 the public interest in the disclosure of the parties and it is
3 the belief of the court that the parties' court files may become
4 a vehicle for improper use if not made anonymous, the court may
5 seal from the public all documents or portions of documents,
6 including all subsequently filed documents, that would identify
7 the parties or contain sufficient information from which the
8 parties' identity could be discerned or inferred."

9 SECTION 2. Section 604-10.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§604-10.5 Power to enjoin and temporarily restrain
12 harassment. (a) For the purposes of this section:

13 "Course of conduct" means a pattern of conduct composed of
14 a series of acts over any period of time evidencing a continuity
15 of purpose.

16 "Harassment" means:

17 (1) Physical harm, bodily injury, assault, or the threat
18 of imminent physical harm, bodily injury, or assault;
19 or

20 (2) An intentional or knowing course of conduct directed
21 at an individual that seriously alarms or disturbs
22 consistently or continually bothers the individual[7]



1 and [~~that~~] serves no legitimate purpose; provided that
2 such course of conduct would cause a reasonable person
3 to suffer emotional distress.

4 (b) The district courts shall have the power to enjoin
5 ~~[e]~~, prohibit, or temporarily restrain harassment.

6 (c) Any person who has been subjected to harassment may
7 petition the district court of the district in which the
8 petitioner resides for a temporary restraining order and an
9 injunction from further harassment.

10 (d) A petition for relief from harassment shall be in
11 writing and shall allege that a past act or acts of harassment
12 may have occurred~~[,]~~ or that threats of harassment make it
13 probable that acts of harassment may be imminent; and shall be
14 accompanied by an affidavit made under oath or statement made
15 under penalty of perjury stating the specific facts and
16 circumstances ~~[from]~~ for which relief is sought.

17 (e) Upon petition to a district court under this section,
18 the court may allow a petition, complaint, motion, or other
19 document to be filed identifying the petitioner as "jane doe" or
20 "john doe"; provided that the court finds that the "jane doe" or
21 "john doe" filing is reasonably necessary to protect the privacy



1 of the petitioner and will not unduly prejudice the prosecution
2 or the defense of the action.

3 In considering a petition requesting a "jane doe" or "john
4 doe" filing, the court shall weigh the petitioner's interest in
5 privacy against the public interest in disclosure.

6 The court, only after finding clear and convincing evidence
7 that would make public inspection inconsistent with the purpose
8 of this section, may seal from the public all documents or
9 portions of documents, including all subsequently filed
10 documents, that would identify the petitioner or contain
11 sufficient information from which the petitioner's identity
12 could be discerned or inferred. Access to identifying
13 information may be permitted to law enforcement or other
14 authorized authority, in the course of conducting official
15 business, to effectuate service, enforcement, or prosecution, or
16 as ordered by the courts.

17 [~~e~~] (f) Upon petition to a district court under this
18 section, the court may temporarily restrain the person or
19 persons named in the petition from harassing the petitioner upon
20 a determination that there is probable cause to believe that a
21 past act or acts of harassment have occurred or that a threat or
22 threats of harassment may be imminent. The court may issue an



1 ex parte temporary restraining order either in writing or
2 orally; provided that oral orders shall be reduced to writing by
3 the close of the next court day following oral issuance.

4 ~~[(f)]~~ (g) A temporary restraining order that is granted
5 under this section shall remain in effect at the discretion of
6 the court for a period not to exceed ninety days from the date
7 the order is granted. A hearing on the petition to enjoin
8 harassment shall be held within fifteen days after the temporary
9 restraining order is granted. ~~[In the event that]~~ If service of
10 the temporary restraining order has not been effected before the
11 date of the hearing on the petition to enjoin, the court may set
12 a new date for the hearing; provided that the new date shall not
13 exceed ninety days from the date the temporary restraining order
14 was granted.

15 The parties named in the petition may file or give oral
16 responses explaining, excusing, justifying, or denying the
17 alleged act or acts of harassment. The court shall receive all
18 evidence that is relevant at the hearing~~[7]~~ and may make
19 independent inquiry.

20 If the court finds by clear and convincing evidence that
21 harassment as defined in paragraph (1) of that definition
22 exists, it may enjoin for no more than three years further



1 harassment of the petitioner, or that harassment as defined in
2 paragraph (2) of that definition exists, it shall enjoin for no
3 more than three years further harassment of the petitioner;
4 provided that this paragraph shall not prohibit the court from
5 issuing other injunctions against the named parties even if the
6 time to which the injunction applies exceeds a total of three
7 years.

8 Any order issued under this section shall be served upon
9 the respondent. For the purposes of this section, "served"
10 shall mean actual personal service, service by certified mail,
11 or proof that the respondent was present at the hearing [~~in~~] at
12 which the court orally issued the injunction.

13 Where service of a restraining order or injunction has been
14 made or where the respondent is deemed to have received notice
15 of a restraining order or injunction order, any knowing or
16 intentional violation of the restraining order or injunction
17 order shall subject the respondent to the provisions in
18 subsection [~~(h)~~] (i).

19 Any order issued shall be transmitted to the chief of
20 police of the county in which the order is issued by way of
21 regular mail, facsimile transmission, or other similar means of
22 transmission.



1 ~~[(g)]~~ (h) The court may grant the prevailing party in an
2 action brought under this section~~[7]~~ costs and fees, including
3 attorney's fees.

4 ~~[(h)]~~ (i) A knowing or intentional violation of a
5 restraining order or injunction issued pursuant to this section
6 is a misdemeanor. The court shall sentence a violator to
7 appropriate counseling and shall sentence a person convicted
8 under this section as follows:

9 (1) For a violation of an injunction or restraining order
10 that occurs after a conviction for a violation of the
11 same injunction or restraining order, ~~[a violator]~~ the
12 person shall be sentenced to a mandatory minimum jail
13 sentence of not less than forty-eight hours; and

14 (2) For any subsequent violation that occurs after a
15 second conviction for violation of the same injunction
16 or restraining order, the person shall be sentenced to
17 a mandatory minimum jail sentence of not less than
18 thirty days.

19 The court may suspend any jail sentence, except for the
20 mandatory sentences under paragraphs (1) and (2), upon
21 appropriate conditions, such as that the defendant remain
22 ~~[alcohol]~~ alcohol- and drug-free, conviction-free, or complete



1 court-ordered assessments or counseling. The court may suspend
2 the mandatory sentences under paragraphs (1) and (2) where the
3 violation of the injunction or restraining order does not
4 involve violence or the threat of violence. Nothing in this
5 section shall be construed as limiting the discretion of the
6 judge to impose additional sanctions authorized in sentencing
7 for a misdemeanor offense.

8 ~~(i)~~ (j) Nothing in this section shall be construed to
9 prohibit constitutionally protected activity."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect on January 1, 2012.

APPROVED this day of , 2011

GOVERNOR OF THE STATE OF HAWAII