



GOV. MSG. NO. 1340

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:

I am transmitting herewith HB56 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB56 HD2 SD2 CD1

RELATING TO CHILD VISITATION

Aloha
Since
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2011

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 56

Honorable Members
Twenty-Sixth Legislature
State of Hawaii

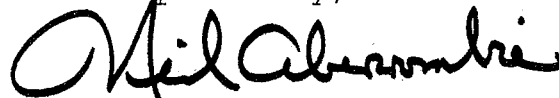
Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 56, entitled "A Bill for an Act Relating to Child Visitation."

The purpose of this bill is to clarify the process for the family court's review of a petition of grandparents' visitation rights by establishing a rebuttable presumption that a parent's decision regarding visitation is in the best interests of the child, permitting the family court to award visitation rights to the child's grandparents if they can prove by clear and convincing evidence that the denial of those visits would cause significant demonstrable harm to the child, and listing factors that the family court shall consider when awarding grandparent visitation rights.

While the goals of this bill are laudable, several difficulties need to be addressed. I believe that it will be too difficult for grandparents to show by clear and convincing evidence that the denial of visitation will cause significant demonstrable harm to the child. While I recognize that parents have a constitutional right to raise their children as they see fit, I also recognize that grandparents often have a significant role in children's lives and should be able to visit their grandchildren.

For the foregoing reasons, I am returning House Bill No. 56 without my approval.

Respectfully,



NEIL ABERCROMBIE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO CHILD VISITATION.

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

1 SECTION 1. Section 571-46.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§571-46.3 Grandparents' visitation rights; petition;**
4 **notice; order.** (a) A grandparent or the grandparents of a
5 minor child may file a petition with the court for an order of
6 reasonable visitation rights. The court may award reasonable
7 visitation rights, provided that the following criteria are met:

8 (1) This State is the home state of the child at the time
9 of the commencement of the proceeding; and

10 (2) ~~[Reasonable]~~ Denial of reasonable visitation rights
11 ~~[are in the best interests of]~~ would cause significant
12 demonstrable harm to the child.

13 (b) In any proceeding on a petition filed pursuant to this
14 section, there shall be a rebuttable presumption that the
15 parent's decision regarding visitation is in the best interests
16 of the child. The presumption may be rebutted by clear and
17 convincing evidence that denial of reasonable visitation rights
18 would cause significant demonstrable harm to the child. In



1 ruling on the petition, the court shall consider factors
2 including the following:

- 3 (1) The nature and extent of any pre-existing relationship
4 between the child and the grandparent;
- 5 (2) Whether the grandparent has previously been granted
6 visitation by the child's parent or custodian and, if
7 so, the nature and extent of the visitation;
- 8 (3) Whether the grandparent has previously been awarded
9 visitation rights or custody of the child by a court;
- 10 (4) Whether the child has resided with the grandparent,
11 either alone or with a parent and if so, how recently
12 and for how long;
- 13 (5) Whether the grandparent has provided financial support
14 to the child, including for food, clothing, education,
15 or medical, dental, or mental health care;
- 16 (6) If the parent or custodian has denied the grandparent
17 visitation or substantially restricted visitation
18 previously granted and whether the reason given, if
19 any, bears on the grandparent's ability to safely care
20 for the child during visitation or relates to an issue
21 between the grandparent and parent not directly



1 related to the safe care of the child during
2 visitation;

3 (7) All relevant factors in the safe family home factors
4 under section 587A-7;

5 (8) All relevant factors under section 571-46(a)(9) and
6 (10) as they pertain to family violence committed by
7 the grandparent or grandparents; and

8 (9) Whether the grandparent or grandparents have
9 previously violated or assisted a parent of the child
10 in violating a temporary restraining order or
11 protective order.

12 (c) No hearing for an order of reasonable visitation
13 rights under this section shall be had unless each of the living
14 parents and the child's custodians [~~shall~~] have had due notice,
15 actual or constructive, of the allegations of the petition and
16 of the time and place of the hearing thereof.

17 (d) An order made pursuant to this section shall be
18 enforceable by the court, and the court may issue other orders
19 to carry out these enforcement powers if in the best interests
20 of the child."



1 SECTION 2. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 3. This Act shall take effect on July 1, 2011.

APPROVED this day of , 2011

GOVERNOR OF THE STATE OF HAWAII

