

Honolulu, Hawaii

March 18, 2011

RE: S.B. No. 77
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Human Services, to which was referred S.B. No. 77, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE COURTS,"

begs leave to report as follows:

The purpose of this bill is to provide greater protection to plaintiffs by:

- (1) Upon a plaintiff's petition, allowing the court to permit the plaintiff to be identified as "Jane Doe" or "John Doe"; provided that the court may consider specific factors in its decision to permit the "Jane Doe" or "John Doe" filing of documents in civil actions and proceedings;
- (2) Allowing the court to seal from the public all or portions of documents, when there are compelling reasons that outweigh the public's interest in the disclosure of the parties and the court believes that court files may be used improperly;
- (3) Upon petition for a temporary restraining order for relief from harassment to a district court, allowing a petitioner to be listed as "Jane Doe" or "John Doe" within court filings; and



- (4) Requiring the court to seal from the public all or portions of documents that would identify the petitioner who is requesting a harassment restraining order, after the court finds clear and convincing evidence of specified circumstances.

The Hawaii Disability Rights Center and several concerned individuals testified in support of this bill. The Judiciary, The Pacific Alliance to Stop Slavery, Polaris Project, and several concerned individuals provided comments.

Your Committee has amended this bill by, among other things:

- (1) Authorizing, rather than requiring, the court to seal from the public all or portions of documents in a petition for a harassment restraining order;
- (2) Under the Uniform Durable Power of Attorney Act, requiring an enforceable durable power of attorney to be signed by two qualified witnesses and acknowledged by a notary public;
- (3) Under the guardianship and protective proceedings laws of the Uniform Probate Code, requiring an enforceable durable power of attorney to be signed by two qualified witnesses and acknowledged by a notary public;
- (4) Requiring that all actions to challenge or contest a will, estate plan, or trust be brought within nine years after the cause of action accrued or within six years after discovery of the fraud or undue influence, whichever period is longer, where:
 - (A) It is alleged that the testator, principal, or property owner who established the will, estate plan, or trust amended the provisions of the will, estate plan, or trust as a result of fraud or undue influence by the beneficiary or beneficiaries of the amendments or persons acting as agents of the beneficiary or beneficiaries; and
 - (B) The action is commenced by persons designated as beneficiaries of the will, estate plan, or trust prior to the amendments;



- (5) Establishing that a person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of a person known by the defendant to be a witness in a family court case and the killing is related to the person's status as a witness;
- (6) Establishing labor trafficking in the first degree as a class A felony and labor trafficking in the second degree as a class B felony or a class A felony under certain circumstances and including provisions that:
 - (A) Authorize the court to consider the time in which the victim was held in servitude and number of victims when determining the sentencing for labor trafficking in the first and second degree;
 - (B) Permit and establish extended terms of imprisonment for a person found guilty of labor trafficking in the first and second degree and where the victim suffered bodily injury;
 - (C) Require the court to order restitution to be paid to victims of labor trafficking and establish restitution amounts;
 - (D) Establish the offense of nonpayment of wages as a class C felony or misdemeanor pertaining to labor trafficking and including provisions that:
 - (i) Establish that a person commits a separate offense of nonpayment of wages for each pay period during which the employee earned wages that the person failed or refused to pay the employee and fines for each offense;
 - (ii) Require the court to order restitution to be paid to victims of nonpayment of wages and establish restitution amounts;
 - (iii) Allow victims of nonpayment of wages to bring a civil action to recover all wages owed by the person convicted of nonpayment of wages; and



- (iv) Define "employee", "person", and "wages" in relation to the offense of nonpayment of wages;

and

- (E) Establish the offense of unlawful conduct with respect to documents as a class C felony if committed in the course of committing labor trafficking in the first and second degree;
- (7) Establishing the offense of sex trafficking in the first degree as a class A felony and sex trafficking in the second degree and class B felony and including provisions that:
 - (A) Provide a complete defense to a charge of sex trafficking in the first degree, sex trafficking in the second degree, or prostitution where the act alleged to have been committed by the accused was obtained, maintained, or advanced by various methods against or to the accused; and
 - (B) Define "advances", "profits", and "prostitution" in relation to sex trafficking;

and

- (8) Making technical, nonsubstantive amendments for clarity, consistency, and style.

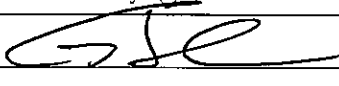
As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 77, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 77, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Human Services,


JOHN M. MIZUNO, Chair



Record of Votes of the Committee on Human Services

Bill/Resolution No.: SB 77, SD1	Committee Referral: HUS, JUD, FIN	Date: 3/14/2011		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
HUS Members	Ayes	Ayes (WR)	Nays	Excused
1. MIZUNO, John M. (C)	✓			
2. JORDAN, Jo (VC)	✓			
3. BELATTI, Della Au				✓
4. HANOHANO, Faye P.	✓			
5. LEE, Chris	✓			
6. MORIKAWA, Dee	✓			
7. WOOLEY, Jessica				✓
8. YAMANE, Ryan I.				✓
9. CHING, Corinne W.L.	✓			
10. PINE, Kymberly Marcos	✓			
TOTAL (10)	7			3
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted if joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				