
A BILL FOR AN ACT

RELATING TO THE PREVENTION OF WORKPLACE VIOLENCE.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 HAWAII WORKPLACE VIOLENCE PREVENTION ACT

6 § -1 Short title. This chapter shall be known as the
7 Hawaii Workplace Violence Prevention Act.

8 § -2 Findings and Purpose. The legislature finds that
9 workplace violence is a problem growing at an alarming rate
10 throughout the State of Hawaii and the United States. Workplace
11 violence results in over five hundred deaths each year in the
12 United States, making it the second leading cause of
13 occupational fatalities in the country. Meanwhile, it is the
14 leading cause of occupational fatalities for women.

15 Events experienced in our community have graphically and
16 tragically demonstrated that the State of Hawaii is not immune
17 to the problem of workplace violence. Accordingly, the
18 legislature finds that new laws are necessary to protect the



1 people of the State of Hawaii in the workforce who are
2 vulnerable to such violence and their spouses, children,
3 parents, family, friends, and co-workers who are equally
4 impacted when workplace violence results in tragedy. The
5 legislature finds that employers who are committed to
6 maintaining safe working environments currently lack efficient
7 and effective tools to obtain judicial relief for the prevention
8 of workplace violence.

9 Accordingly, the purpose of this Act is to provide a simple
10 and efficient mechanism for employers and employees to obtain
11 judicial relief for the prevention and control of workplace
12 violence.

13 **§ -3 Definitions.** As used in this chapter:

14 "Course of conduct" is an intentional or knowing pattern of
15 conduct composed of a series of two or more acts over a period
16 of time, regardless of how long or short, evidencing a
17 continuity of purpose, or a general propensity for violence;
18 following or stalking an employee; entering an employee's
19 workplace; entering an employer's place of business; following
20 an employee during hours of employment; making telephone calls
21 to an employee; or sending correspondence to an employee or
22 employer by any means, including the use of telephonic



1 communication devices, the public or private mails, interoffice
2 mail, intra-office mail, fax, computer e-mail, or telephonic
3 text.

4 "Employee" means any person working for an employer,
5 including any volunteer or independent contractor who performs
6 services for an employer. The term "employee" shall include the
7 immediate family and household members of the employee.

8 "Employer" means any person or entity, including the State
9 or any of its political subdivisions, and any agent of such
10 person or entity, having one or more employees. The term
11 "employer" shall include any employment agency. The term
12 "employer" shall also include the officers, directors, trustees,
13 agents and legal counsel of any such person or entity.

14 "Employment" means any service performed by an individual
15 for another person or entity under any work or service
16 relationship, contract of hire, or apprenticeship, express or
17 implied, oral or written, whether lawfully or unlawfully entered
18 into.

19 "Employment agency" means any person or entity engaged in
20 the business of providing employment information, procuring
21 employment for applicants, or providing employees for placement
22 with employers upon request.



1 "Household member" means any person residing with an
2 employee.

3 "Immediate family" means a spouse, domestic partner, person
4 joined in civil union, child, parent, sibling, grandchild,
5 grandparent, or reciprocal beneficiary with or of an employee.

6 "Petitioner" means any employer or employee who seeks
7 relief pursuant to this chapter.

8 "Property damage" means the intentional or knowing damage
9 of the property of another that is made without the express
10 consent of the property owner.

11 "Psychological abuse" means conduct directed at an employee
12 that alarms, disturbs, or bothers the employee.

13 "Respondent" means any individual against whom relief is
14 sought pursuant to this chapter.

15 "Threat of violence" is any verbal or written statement or
16 course of conduct that would cause a reasonable person to fear
17 for that person's safety or the safety of another, or the safety
18 and integrity of that person's property or the property of
19 another.

20 "Violence" means any physical harm, bodily injury, assault,
21 battery, psychological abuse, or property damage, or the verbal



1 or written threat of physical harm, bodily injury, assault,
2 battery or property damage.

3 "Workplace" means any site, premises, location, or place
4 where an employer conducts business operations or activities,
5 regardless of the employer's ownership or tenancy status, and
6 regardless of the employer's right to exclusive use or non-
7 exclusive use, operation or control of the site, premises,
8 location or place.

9 § -4 Power to enjoin or temporarily restrain workplace
10 violence. (a) The circuit courts shall have the power to
11 enjoin, prohibit, or temporarily restrain workplace violence or
12 the threat of workplace violence by special proceeding,
13 initiated without the filing of a complaint, or as a regular
14 proceeding initiated by the filing of a complaint.

15 (b) Any employer, whose employee has been subjected to
16 violence or the threat of violence by another, including a co-
17 worker, that can be construed to have been carried out at the
18 workplace or to be carried out at the workplace, or that may be
19 carried out at the workplace in the future, may petition for an
20 ex parte temporary restraining order, a preliminary injunction,
21 or a permanent injunction in the circuit court in the circuit in
22 which the petitioner maintains the employer's principal place of



1 business on behalf of the employer, or one or more of the
2 employer's employees, prohibiting and enjoining further violence
3 or threats of violence from the individual who has engaged in
4 the violence or who has made the threats of violence.

5 (c) Any employee who has been subjected to violence or the
6 threat of violence by another, including a co-worker, that can
7 be construed to have been carried out at the workplace or to be
8 carried out at the workplace, or that may be carried out at the
9 workplace in the future, may petition for an ex parte temporary
10 restraining order, a preliminary injunction, or a permanent
11 injunction from the circuit court of the circuit in which the
12 employee resides on behalf of the employee, or the employee's
13 immediate family or household members, prohibiting and enjoining
14 further violence or threats of violence from the individual who
15 has engaged in the violence or has made the threats of violence.

16 **§ -5 Petition for relief.** (a) A petition for relief
17 under this chapter shall be in writing, and shall allege that a
18 past act or acts of violence may have occurred or that a threat
19 or threats of violence have occurred, may have occurred, or may
20 occur in the future unless restrained. The petition for relief
21 shall be accompanied by one or more affidavits made under oath,
22 or one or more statements made under penalty of perjury, stating



1 the specific facts and circumstances for which relief is sought;
2 provided that the Hawaii rules of evidence regarding hearsay
3 evidence shall not apply to the affidavit or statement of any
4 person acting or appearing as a representative of an employer in
5 any action under this chapter.

6 (b) Upon a petition for relief to a circuit court under
7 this chapter, the court may enter a temporary restraining order
8 against the respondent without a hearing upon a determination
9 that there is good cause to believe that:

10 (1) Violence or a threat of violence has or may have
11 occurred;

12 (2) Violence or a threat of violence may be imminent or
13 may occur in the future;

14 (3) Irreparable harm may result to the employer or
15 employee if the request for relief is denied; or

16 (4) Providing notice to the respondent might trigger the
17 very violence or threat of violence sought to be
18 restrained.

19 (c) The court may issue an ex parte temporary restraining
20 order either orally or in writing; provided that an oral order
21 shall be reduced to writing by the court as expeditiously as
22 practicable following issuance of the oral order.



1 (d) For the purposes of this chapter, there shall be a
2 presumption that violence or the threat of violence shall
3 constitute irreparable harm, and that the prevention and
4 restraint of violence and the threat of violence shall be in the
5 public interest.

6 § -6 Acts of violence and threats of violence to be

7 enjoined or temporarily restrained. (a) Any temporary
8 restraining order, preliminary injunction, or permanent
9 injunction issued pursuant to this chapter shall enjoin the
10 respondent from performing any of the following acts:

- 11 (1) Engaging in any violence;
- 12 (2) Making any threat of violence;
- 13 (3) Contacting or threatening a petitioning employer or an
14 employee on whose behalf the employer petitioned for
15 relief, petitioning employee or an immediate family or
16 household member on whose behalf the employee
17 petitioned for relief, or an affiant or declarant, by
18 any means including telephonic, written, or electronic
19 contacts;
- 20 (4) Engaging in any physical contact with a petitioning
21 employer or an employee on whose behalf the employer
22 petitioned for relief, or a petitioning employee or an



- 1 immediate family or household member on whose behalf
2 the employee petitioned for relief;
- 3 (5) Entering or visiting the residence of a petitioning
4 employer or an employee on whose behalf the employer
5 petitioned for relief, or a petitioning employee or an
6 immediate family or household member on whose behalf
7 the employee petitioned for relief;
- 8 (6) Entering or visiting the place of business of a
9 petitioning employer or the place of employment of an
10 employee on whose behalf the employer petitioned for
11 relief, or a petitioning employee or an immediate
12 family or household member on whose behalf the
13 employee petitioned for relief;
- 14 (7) Entering or visiting the employer's place of business;
- 15 (8) Possessing, controlling, or using any firearm or
16 ammunition while the temporary restraining order,
17 preliminary injunction, or permanent injunction is in
18 effect;
- 19 (9) Coming within one hundred feet of a petitioning
20 employer or an employee on whose behalf the employer
21 petitioned for relief, or a petitioning employee or an
22 immediate family or household member on whose behalf



1 the employee petitioned for relief, or an affiant or
2 declarant; or

3 (10) Any other restriction, limitation, or order that, in
4 the reasonable discretion of the court, is necessary
5 under the circumstances to prevent workplace violence
6 or the threat of workplace violence from occurring or
7 reoccurring.

8 (b) The court may order that the respondent reimburse:

9 (1) The petitioner's related and reasonable medical
10 expenses, including reasonable expenses for mental
11 health counseling;

12 (2) The petitioner's reasonable legal fees and costs; or

13 (3) Any other items that are appropriate and necessary to
14 fulfill the purposes of this chapter.

15 (c) Any temporary restraining order issued pursuant to
16 this chapter shall order that the respondent immediately and
17 affirmatively surrender all firearms, ammunition, or ammunition
18 loading, packing, or manufacturing devices, in the respondent's
19 possession, custody, or control to the appropriate county police
20 department for safekeeping until further court order is issued,
21 pursuant to section 134-7(f).



1 (d) Consistent with the rights afforded by the Fourth
2 Amendment of the United States Constitution and article I,
3 section 7 of the Hawaii State Constitution, if the court has
4 probable cause to believe that the violence or threat of
5 violence sought to be restrained pursuant to this chapter
6 involves the use of a firearm, any temporary restraining order,
7 preliminary injunction, or permanent injunction issued pursuant
8 to this chapter may direct the department of public safety or
9 the appropriate county police department to immediately search
10 the respondent's premises and property, including the
11 respondent's current residence and all motor vehicles registered
12 in the respondent's name or to which respondent has access, for
13 the purposes of locating and seizing any and all firearms,
14 ammunition, or ammunition loading, packing, or manufacturing
15 devices, found during such a search, and to confiscate any
16 firearms, ammunition, or ammunition loading, packing, or
17 manufacturing devices located during such search until further
18 order of the court.

19 (e) In the case that any ammunition loading, packing, or
20 manufacturing device located during such search may not
21 conveniently be taken into custody, transported, and stored, due
22 to its size, law enforcement officers shall remove such parts of



1 the device necessary to render such device inoperable and shall
2 take the removed parts into custody until further order of the
3 court.

4 (f) A temporary restraining order, preliminary injunction,
5 or permanent injunction issued in accordance with subsection (c)
6 and (d) shall be based on probable cause and shall have the same
7 force and effect as a search warrant issued pursuant to part III
8 of chapter 803. The law enforcement department conducting any
9 search and seizure pursuant to subsection (d) shall provide the
10 petitioner or petitioner's legal counsel with a complete written
11 inventory list of any and all firearms or other items seized
12 immediately following the search and seizure, and file a return
13 of service of the order with the inventory list attached as an
14 exhibit and the authorizing court order.

15 **§ -7 Duration of temporary restraining order.** A
16 temporary restraining order granted pursuant to this chapter
17 shall remain in effect at the discretion of the court, for a
18 period of time not to exceed ninety days from the date the
19 temporary restraining order was granted; provided that either
20 upon the motion of the petitioner or sua sponte decision of the
21 court, the temporary restraining order may be extended
22 periodically for reasonable periods of similar duration.



1 **§ -8 Hearing on request for injunctive relief.** (a)

2 Prior to the expiration date of any temporary restraining order
3 issued or extended pursuant to section -7, the court shall
4 hear any related petitions for preliminary or permanent
5 injunctive relief. Upon such motion, the respondent may respond
6 to allegations of violence or threats of violence. At the
7 hearing, the judge shall receive any testimony that is relevant
8 and reaches the propensity for violence of the respondent;
9 provided that a petitioner's use of evidence pertaining to a
10 respondent's arrest and court record in connection with any
11 proceeding authorized by this chapter shall not constitute a
12 violation of chapter 378 or any related administrative rules.

13 (b) If the judge finds by a preponderance of the evidence
14 that the respondent engaged in violence or made a threat of
15 violence, that future violence or that future threats of
16 violence are possible, or that respondent has a propensity for
17 violence, the court shall grant a preliminary injunction or
18 permanent injunction.

19 (c) The preliminary injunction or permanent injunction
20 shall prohibit any of the acts listed in section -6.

21 **§ -9 Duration of injunction.** A preliminary injunction
22 or permanent injunction issued pursuant to this chapter shall



1 have a duration of not more than five years; provided that the
2 petitioner may apply for periodic renewals of the preliminary
3 injunction or permanent injunction at any time before expiration
4 of the existing preliminary injunction or permanent injunction
5 by filing a motion with the court.

6 **§ -10 Service of restraining orders and injunctions.**

7 (a) Upon the request of the petitioner, the court may order the
8 department of public safety or the appropriate county police
9 department to serve the temporary restraining order, preliminary
10 injunction, or permanent injunction and related documents upon
11 the respondent.

12 (b) In the case that the petitioner elects not to request
13 that the department of public safety or the appropriate county
14 police department serve the temporary restraining order,
15 preliminary order, or permanent injunction and other related
16 documents, the petitioner may request that the order be
17 forwarded by the clerk of court to the department of public
18 safety or the appropriate police department, and any such
19 request by petitioner shall be effectuated by the clerk of the
20 court within twenty-four hours of the request. The department
21 of public safety and each appropriate county police department
22 shall make available to other law enforcement officers, through



1 a system for verification, information as to the existence of
2 any temporary restraining order, preliminary injunction, or
3 permanent injunction, or other order issued pursuant to this
4 chapter.

5 **§ -11 Violation of restraining order or injunction.**

6 (a) Any violation of a temporary restraining order, preliminary
7 injunction, permanent injunction, or other related order issued
8 pursuant to this chapter shall be punishable as criminal
9 contempt as it is defined under section 710-1077.

10 (b) Any violation of a temporary restraining order,
11 preliminary, permanent injunction, or other related order issued
12 pursuant to this chapter prohibiting the possession, control,
13 use of any firearm or ammunition shall be punishable as an
14 offense under section 134-7.

15 **§ -12 Effect on other laws.** (a) Nothing in this
16 chapter shall be construed as creating, expanding, diminishing,
17 altering, or modifying the duty, if any, of an employer to
18 provide a safe workplace for employees and other persons, or to
19 invoke or use the provisions of this chapter in any given
20 circumstance. The failure to invoke or use the provisions of
21 this chapter shall not form the basis for any claim or liability
22 against an employer.



1 (b) Nothing in this chapter shall be construed as limiting
2 any other rights or remedies available to an employer or
3 employee under existing law, including the seeking of injunctive
4 relief through methods other than the procedures set forth in
5 this chapter; provided that no other state law shall limit the
6 ability of an employer or employee from seeking relief pursuant
7 to this chapter.

8 (c) There shall be no civil liability for any employer or
9 employee who initiates a proceeding pursuant to this chapter or
10 who commits acts or makes statements in connection with any
11 proceeding pursuant to this chapter or in connection with the
12 investigation of any alleged act of violence or threat of
13 violence in the workplace."

14 SECTION 2. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 3. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun before its effective date.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: ~~D.C. Richman~~
B/R

JAN 18 2012



H.B. NO. 2028

Report Title:

Workplace Violence; Temporary or Injunctive Relief

Description:

Establishes a legal mechanism by which an employer or employee may seek a temporary restraining order, or preliminary or permanent injunctive relief on their own behalf or on the behalf of others, to prohibit workplace violence or the threat of workplace violence.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

