

JAN 25 2012

A BILL FOR AN ACT

RELATING TO TEMPORARY RESTRAINING ORDERS.

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

1 SECTION 1. Section 586-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Imminent" means the state or condition of being
5 reasonably likely to occur at any moment or near at hand, rather
6 than distant or remote."

7 SECTION 2. Section 586-3, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) A petition for relief shall be in writing upon forms
10 provided by the court and shall [~~allege~~]:

11 (1) Allege, under penalty of perjury, that: [a]

12 (A) A past act or acts of abuse may have occurred;
13 [~~threats~~]

14 (B) Threats of abuse make it probable that acts of
15 abuse may be imminent; or [~~extreme~~]

16 (C) Extreme psychological abuse or malicious property
17 damage is imminent; [~~and be~~]



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1 (2) Be accompanied by an affidavit made under oath or a
 2 statement made under penalty of perjury stating the
 3 specific facts and circumstances from which relief is
 4 sought [-]; and

5 (3) Disclose all pending litigation involving the
 6 petitioner; provided that a petitioner who fails to
 7 comply with this paragraph shall be liable for any
 8 reasonable attorney's fees incurred by the respondent
 9 in connection with the petition."

10 SECTION 3. Section 586-4, Hawaii Revised Statutes, is
 11 amended by amending subsection (a) to read as follows:

12 "(a) Upon petition to a family court judge, an ex parte
 13 temporary restraining order may be granted without notice to
 14 restrain either or both parties from contacting, threatening, or
 15 physically abusing each other, notwithstanding that a complaint
 16 for annulment, divorce, or separation has not been filed[-];
 17 provided that prior to granting the temporary restraining order,
 18 the judge may require ex parte meetings with the petitioner for
 19 the purpose of receiving information to determine the validity
 20 of the facts and circumstances stated in the petition. The
 21 order may be granted to any person who, at the time the order is
 22 granted, is a family or household member as defined in section



1 586-1 or who filed a petition on behalf of a family or household
2 member. The order shall enjoin the respondent or person to be
3 restrained from performing any combination of the following
4 acts:

- 5 (1) Contacting, threatening, or physically abusing the
6 protected party;
- 7 (2) Contacting, threatening, or physically abusing any
8 person residing at the protected party's residence; or
- 9 (3) Entering or visiting the protected party's residence.

10 The ex parte temporary restraining order may also enjoin or
11 restrain both of the parties from taking, concealing, removing,
12 threatening, physically abusing, or otherwise disposing of any
13 animal identified to the court as belonging to a household,
14 until further order of the court."

15 SECTION 4. Section 604-10.5, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (a) by adding two new
18 definitions to be appropriately inserted and to read:

19 "Imminent" means the state or condition of being
20 reasonably likely to occur at any moment or near at hand, rather
21 than distant or remote.



1 "Served" means actual personal service, service by
2 certified mail, or proof that a respondent under this section
3 was present at the hearing at which a court orally issued an
4 injunction pursuant to this section."

5 2. By amending subsection (d) to read:

6 "(d) A petition for relief from harassment shall ~~[be]~~:

7 (1) Be in writing ~~[and shall allege]~~;

8 (2) Allege that a past act or acts of harassment may have

9 occurred or that threats of harassment make it

10 probable that acts of harassment may be imminent; ~~[and~~

11 ~~shall be]~~

12 (3) Be accompanied by an affidavit made under oath or

13 statement made under penalty of perjury stating the

14 specific facts and circumstances for which relief is

15 sought ~~[+]~~; and

16 (4) Disclose all pending litigation involving the

17 petitioner; provided that a petitioner who fails to

18 comply with this paragraph shall be liable for any

19 reasonable attorney's fees incurred by the respondent

20 in connection with the petition."

21 3. By amending subsections (f), (g), and (h) to read:



1 "(f) Upon petition to a district court under this section,
2 the court may require ex parte meetings with the petitioner for
3 the purpose of receiving information to determine the validity
4 of the facts and circumstances stated in the petition. The
5 court may temporarily restrain the person or persons named in
6 the petition from harassing the petitioner upon a determination
7 that there is probable cause to believe that a past act or acts
8 of harassment have occurred or that a threat or threats of
9 harassment may be imminent. The court may issue an ex parte
10 temporary restraining order either in writing or orally;
11 provided that oral orders shall be reduced to writing by the
12 close of the next court day following oral issuance.

13 (g) A temporary restraining order that is granted under
14 this section shall remain in effect at the discretion of the
15 court for a period not to exceed ninety days from the date the
16 order is granted. A hearing on the petition to enjoin
17 harassment shall be held within fifteen days after the temporary
18 restraining order is granted. If service of the temporary
19 restraining order has not been effected before the date of the
20 hearing on the petition to enjoin, the court may set a new date
21 for the hearing; provided that the new date shall not exceed



1 ninety days from the date the temporary restraining order was
2 granted.

3 The parties named in the petition may file or give oral
4 responses explaining, excusing, justifying, or denying the
5 alleged act or acts of harassment. The court shall receive all
6 evidence that is relevant at the hearing and may make
7 independent inquiry.

8 If the court finds by clear and convincing evidence that
9 harassment as defined in paragraph (1) of that definition
10 exists, it may enjoin for no more than three years further
11 harassment of the petitioner, or that harassment as defined in
12 paragraph (2) of that definition exists, it shall enjoin for no
13 more than three years further harassment of the petitioner;
14 provided that this paragraph shall not prohibit the court from
15 issuing other injunctions against the named parties even if the
16 time to which the injunction applies exceeds a total of three
17 years.

18 Any order issued under this section shall be served upon
19 the respondent. [~~For the purposes of this section, "served"~~
20 ~~shall mean actual personal service, service by certified mail,~~
21 ~~or proof that the respondent was present at the hearing at which~~
22 ~~the court orally issued the injunction.] Where service of a~~



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1 restraining order or injunction has been made or where the
 2 respondent is deemed to have received notice of a restraining
 3 order or injunction order, any knowing or intentional violation
 4 of the restraining order or injunction order shall subject the
 5 respondent to the provisions in subsection (i).

6 Any order issued shall be transmitted to the chief of
 7 police of the county in which the order is issued by way of
 8 regular mail, facsimile transmission, or other similar means of
 9 transmission.

10 (h) ~~[The]~~ Subject to subsection (d)(4), the court may
 11 grant the prevailing party in an action brought under this
 12 section costs and fees, including attorney's fees."

13 SECTION 5. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Carol Furumaga

Trananne Chun Akilaul



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Report Title:

Temporary Restraining Orders; Disclosure of Pending Litigation

Description:

Requires petitioners for temporary restraining orders to disclose all pending litigation involving the petitioner. Specifies a court's discretion to meet with the petitioner to receive additional information prior to granting a temporary restraining order. Defines "imminent" with regard to the type of harm for which a temporary restraining order may be issued.

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

