



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, February 1, 2017 2:00 PM
State Capitol, Conference Room 325

by
Judge R. Mark Browning
Senior Family Judge and Deputy Chief Judge
First Circuit

Bill No. and Title: House Bill No. 80, Relating to Annulment, Divorce, and Separation.

Purpose: Imposes a restraining order that preserves the financial assets of the parties and their dependents upon the commencement of annulment, divorce, or separation court action.

Judiciary's Position:

The Judiciary takes no position on this bill and respectfully submits this testimony suggesting two changes to the current bill.

An unfortunate reality of the 21st century is the extensive reliance on credit for both personal and business ordinary expenses. The language in the current bill must allow for this common reliance. We respectfully suggest the following additional language on page two, from line 15, which supports this bill's policy of preserving status quo pending litigation.

(2) Neither party shall incur any further debts, except reasonable amounts necessary for living and business expenses, including the children's educational expenses, and reasonable litigation fees and costs for the pending action, that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

If the above suggested change is incorporated, this would read as follows:



(2) Neither party shall incur any further debts, except reasonable amounts necessary for living and business expenses, including the children's educational expenses, and reasonable litigation fees and costs for the pending action, that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

With the implementation of automatic restraining orders, defendants must have an avenue to quickly contest such orders. The existing court rules and practices are sufficient avenues. The proposed language is not necessary to protect the interests of the defendants and may act as a "logjam", affecting the timely treatment of all pre-decree motions. We respectfully suggest the following language at page three from line 16.

(b) After service of the complaint for annulment, divorce, or separation, ~~on two days' notice to the other party or on shorter notice as the court may prescribe, a party may appear, without thereby submitting oneself to the jurisdiction of the court and move to modify or dissolve the restraining order~~ the defendant may file a motion to set aside or modify the restraining order and may choose to file said motion without submitting to the jurisdiction of the court.. The court shall proceed to hear and determine the motion as expeditiously as possible.

If the above suggested change is incorporated, this would read as follows:

(b) After service of the complaint for annulment, divorce, or separation, the defendant may file a motion to set aside or modify the restraining order and may choose to file said motion without submitting to the jurisdiction of the court. The court shall proceed to hear and determine the motion as expeditiously as possible.

Thank you for the opportunity to testify on House Bill No. 80.



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Thank you for the opportunity to testify on House Bill No. 80.

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

c/o 841 Bishop Street, Ste. 480, Honolulu, Hawaii 96813
www.hawaiifamilylawsection.org

January 31, 2017

TO: Representative Scott Y. Nishimimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

FROM: LYNNAE LEE, Chair
TOM TANIMOTO, Vice-Chair
Family Law Section of the Hawaii State Bar Association

HEARING DATE: February 1, 2017 at 2 p.m.

RE: Testimony in Support of HB80 Relating to Annulment,
Divorce, and Separation

CHAIR
LYNNAE LEE
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VICE-CHAIR / CHAIR-ELECT
TOM TANIMOTO
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SECRETARY
ANTHONY PERRAULT
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TREASURER
NAOKO MIYAMOTO
N.Miyamoto@hifamlaw.com

Dear Chair Nishimoto, Vice Chair San Buenaventura, and fellow committee members:

The Family Law Section of the Hawaii Bar Association supports HB80. This bill brings all the islands into closer conformity with each other with respect to pre-trial matters concerning annulment, divorce and separation matters. Our members who practice on Kauai are well familiar with the fact that the Fifth Circuit has for some time automatically implemented a financial restraining order upon the filing of an annulment, divorce or separation case.

This bill seeks to guard against asset dissipation and/or concealment which are not unheard of conduct at the onset of nasty divorce actions, but it also places everything on the table, so to speak, in the hopes of simplifying the marshalling, accounting and ultimate division of assets and debts. With respect to children, maintaining them within their customary jurisdictions and education settings will continue to provide them the stability they need during what can be a turbulent time. Overall, HB80 can result in preserving the marital estate and maintain the status quo by avoiding costly litigation to fix unilateral (and sometimes ill-advised) actions of litigants.

For the reasons stated above, the Family Law Section supports HB80. Thank you for the opportunity to provide testimony on this bill.

Sincerely,



Lynnae Lee, Chair, Family Law Section
Tom Tanimoto, Vice-Chair, Family Law Section

NOTE: *The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 3:31 PM
To: JUDtestimony
Cc: ttanimoto@coatesandfrey.com
Subject: *Submitted testimony for HB80 on Feb 1, 2017 14:00PM*

HB80

Submitted on: 1/31/2017

Testimony for JUD on Feb 1, 2017 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Tom Tanimoto | Family Law Section | Support | Yes |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TESTIMONY OF THOMAS D. FARRELL

Regarding House Bill 80 Relating to Annulment, Divorce and Separation

House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair

Wednesday, February 1, 2016 2:00 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Nishimoto and Members of the Committee:

I support HB 80, which would authorize an automatic injunction upon the filing of a divorce action. This has been the practice in the Fifth Circuit, and I believe it merits adoption statewide. That this has not already occurred is due to a perception that a statutory authorization is needed; if so, this bill would provide it.

To avoid repetition, I will simply ask that the committee take note of my prior testimony on HB 79, and to the extent that HB 80 raises some of the same issues (particularly the need for some sort of domestic violence exception) my comments are the same.

Let me turn to specific provisions of HB 80 that are different from HB 79.

I like the language of the financial restraining order provisions of this bill as they are much clearer and specific than those of HB 79. The language about the duration of the order is also preferable. While the sanctions for violation are not as eye-catching as the mandatory jail sentences of HB 79, violations of the order would be punishable through the imposition of civil sanctions in the pending divorce case and/or criminal contempt proceedings. This bill does not require mandatory mediation, nor does it mandate the filing of financial statements. In my opinion, those omissions are a good thing. Regarding the latter, if a party wants to force the other to file financial statements early in the case, the usual methods of doing so are to file a motion or file a discovery request.

I find the requirement not to publish the order when service is made by publication to be curious, but probably it should remain. I gather that the intent was not to make things more expensive by requiring the publication to be longer. However, we publish only in cases where we cannot find the defendant, typically in cases where the defendant is a nonresident. Service by publication does not confer personal jurisdiction over a nonresident, and therefore the order---even if published---would not be enforceable against the defendant. In fact, the criminal process will not be available to enforce such an order unless it is personally served upon the defendant.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 8:50 AM
To: JUDtestimony
Cc: katc31999@gmail.com
Subject: *Submitted testimony for HB80 on Feb 1, 2017 14:00PM*

HB80

Submitted on: 1/31/2017

Testimony for JUD on Feb 1, 2017 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Kat Culina | Individual | Support | No |

Comments:

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JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 4:05 PM
To: JUDtestimony
Cc: panther_dave@yahoo.com
Subject: Submitted testimony for HB80 on Feb 1, 2017 14:00PM

HB80

Submitted on: 1/30/2017

Testimony for JUD on Feb 1, 2017 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dave Kisor | Individual | Support | No |

Comments: I'm divorced, and although we had no human children, I really miss the cats. I've had friends who spent their entire fortunes trying to find their children after a divorce and their exs moved the kids around so they could not be found, even after a court order not to move them around.

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LATE



TO: Chair Nishimoto
Vice Chair San Buenaventura
Members of the Committee on Judiciary

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: HB 80

Aloha! Thank you for the opportunity to provide our testimony in opposition to HB 80.

We are not in favor of the Court issuing an automatic restraining order in any divorce, annulment or separation. It would seem to us that judges should have the discretion to determine, after hearing evidence, on a case by case basis whether an order should be issued pertaining to sale or transfer of any property or assets.

Sometimes a victim may not anticipate the harm that can befall her (him) if a partner decides to hide assets or claim marital assets. It would seem that a better way could be devised to put protections into place to guard against such exploitation. On the other hand, incurring debt may be an inevitable outcome for victims, as they are more often without resources, and too often, return to their abusers because they do not have sufficient resources to sustain independence or support for the children.

It is a concern for us that personal service is not required, but could the order could be made effective by publication. Given the seriousness of The restrictions imposed by the orders are serious and we believe that the notice should be by personal service which is the standard for existing statute.

We are also opposed to the prohibition of parties to remove the children from the island or from the school they are attending. There are safety considerations that must be taken into consideration and assessed appropriately. There may be real needs to escape that should not result in punishment of a victim acting in the best interests of herself (himself) and her (his) children.

We rely on our Courts to have judges well trained and equipped to address property and safety issues.

Thank you for holding this Bill.

P. O. Box 3198 Honolulu, HI 96801-3198
O'ahu Helpline: 808 531-3771 | Toll-free: 800 690-6200 | Administration: 808 534-0040 | Fax 808 531-7228
dvac@stoptheviolence.org | www.domesticviolenceactioncenter |
facebook.com/domesticviolenceactioncenterhawaii





25 Years

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January 31, 2017

To: Representative Scott Nishimoto, Chair
Representative Joy San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Janelle Oishi, Managing Director
Hawaii State Coalition Against Domestic Violence

RE: Testimony in Opposition, HB 80, Relating to Annulment, Divorce and Separation

The Hawaii State Coalition Against Domestic Violence (HSCADV) is a statewide partnership of 25 domestic violence programs and shelter providers across our Hawaiian Islands. Our mission is to engage communities and organizations to end domestic violence through education, advocacy, and action for social justice.

HSCADV is submitting testimony in opposition of HB 80, as it would disproportionately negatively impact victims of domestic violence and their children. As domestic violence cases comprise a significant proportion of all family court cases, including divorce, the automation of restraining orders would have a punitive effect on victims trying to access safety for themselves and their children.

HB 80 would like to restrict individuals from moving a minor child out of the current residence, school, or island. Many victims of domestic violence take steps such as leaving the residence to stay at a different location or shelter, and keeping themselves and their children away from the batterer to stay safe. This may include leaving the island in cases where the batterer is extremely controlling and dangerous. If HB 80 were enacted, this would criminalize the actions victims take to ensure safety for themselves and their children.

HB 80 would also like to prevent incurring additional debt via lines of credit. Financial abuse occurs in 98% of all domestic violence cases. One of the major reasons survivors stay or return to the abusive relationship is because the abuser controls their money supply, leaving them with no financial resources. Many survivors and military spouse abuse survivors do not have any access to funds and must utilize credit. To deny survivors this access to finances is to further victimize them and keep them trapped in violent situations.

Another concerning factor is that this restraining order would not require personal service and could be made effective by publication. Given the seriousness of the restrictions imposed by the orders, it is imperative that the notice be by personal service, which is the standard for the existing Temporary Restraining Order process.

Given the detrimental outcomes for domestic violence victims and their children, HSCADV respectfully requests that the Committee hold HB 80. Thank you for this opportunity to testify.

Janelle Oishi, MSW
Hawaii State Coalition Against Domestic Violence

Together we can do amazing things

LATE

**Michael S. Zola
Attorney at Law
PO Box 2165
Kamuela, HI 96743
(808) 329-1333
Email: michaelzolalaw@gmail.com**

Re: Testimony in Support of HB80

First Hearing: February 1, 2017 at 2:00pm

To the Honorable Members of the House Committee on Judiciary:

I respectfully submit this testimony in support of HB 80.

I have been a practicing family law attorney in Hawaii since 1981, specializing in divorce actions. I have fully reviewed HB 80 submitted January 18, 2017.

Presently when a party files a Complaint for Divorce, in order to obtain a financial restraining order which prevents the other party from wasting, transferring, encumbering, or otherwise disposing of personal and real property, they must file a Motion for Pre-Decree Relief with the Family Court. While financial restraining orders are generally granted ex parte as a matter of course and prior to the hearing set on such a motion, many pro se parties do not realize the need for such a motion or for such financial restraining orders and so fail to file the necessary motion or do not do so in a timely manner.

In addition to providing for the automatic implementation of such a restraining order upon the parties when the Complaint is filed and/or served, HB 80 provides for additional automatic orders that I believe serve the best interests of children in divorce proceedings, namely that neither party remove the children from the island where they reside, change their school enrollment, modify or terminate their existing insurance coverage, or change life insurance beneficiaries. The bill provides that these orders may be modified by the written agreement of the parties, or upon motion, by order of the Family Court, as it should be.

I believe this legislation will protect parties and their children and lessen the necessity for pre-Decree litigation in divorce proceedings. On that ground, I respectfully urge a vote to pass this legislation as written.

Dated: January 31, 2017, Honoka'a, Hawaii.


Michael S. Zola