

JAN 19 2024

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# A BILL FOR AN ACT

RELATING TO WORKPLACE SAFETY.

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

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§321- Reporting of acts of violence against health  
5 care workers. (a) A person who employs or contracts with a  
6 health care worker who suffers an act of violence may report the  
7 event to law enforcement; provided that the health care worker  
8 consents to reporting the event.

9 (b) Nothing in this section shall be construed to prohibit  
10 a health care worker from self-reporting to law enforcement an  
11 act of violence.

12 (c) For purposes of this section:

13 "Act of violence" means an action in which a person  
14 intentionally or knowingly uses force that causes bodily injury  
15 to another person or threatens, by word or conduct, to cause  
16 bodily injury to another person.



1       "Health care facility" has the same meaning as in section  
2 323D-2.

3       "Health care worker" means any employee or independent  
4 contractor who is employed or contracted to perform work in a  
5 health care facility and who provides health care services in  
6 the course of employment or by contract."

7       SECTION 2. Section 604-10.5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9       "**§604-10.5 Power to enjoin and temporarily restrain**  
10 **harassment.** (a) For the purposes of this section:

11       "Course of conduct" means a pattern of conduct composed of  
12 a series of acts over any period of time evidencing a continuity  
13 of purpose.

14       "Harassment" means:

15       (1) Physical harm, bodily injury, assault, or the threat  
16           of imminent physical harm, bodily injury, or assault;  
17           or

18       (2) An intentional or knowing course of conduct directed  
19           at an individual that seriously alarms or disturbs  
20           consistently or continually bothers the individual and  
21           serves no legitimate purpose; provided that such



1 course of conduct would cause a reasonable person to  
2 suffer emotional distress.

3 "Health care facility" has the same meaning as in section  
4 323D-2.

5 "Health care worker" has the same meaning as in section  
6 321- .

7 (b) The district courts shall have the power to enjoin,  
8 prohibit, or temporarily restrain harassment.

9 (c) Any person who has been subjected to harassment may  
10 petition the district court of the district in which the  
11 petitioner resides for a temporary restraining order and an  
12 injunction from further harassment. A person who employs or  
13 contracts with a health care worker who has been subjected to  
14 harassment at the health care facility in which the health care  
15 worker is employed or contracted to perform work may, on behalf  
16 of and with the consent of the health care worker, petition the  
17 district court of the district in which the health care facility  
18 is situated for a temporary restraining order and an injunction  
19 from further harassment at the health care facility; provided  
20 that no injunction shall be issued in derogation of chapter 380.



1        An employee organization that represents the health care  
2 worker shall be allowed to intervene in a proceeding under this  
3 section.

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

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

6        (2) Allege that a past act or acts of harassment may have  
7 occurred or that threats of harassment make it  
8 probable that acts of harassment may be imminent~~[+]~~.

9        In the case of a petition filed by a person who  
10 employs or contracts with a harassed health care  
11 worker, allege that a past act or acts of harassment  
12 may have occurred or that threats of harassment make  
13 it probable that acts of harassment may be imminent at  
14 the health care facility; and ~~[shall be]~~

15        (3) Be accompanied by an affidavit made under oath or  
16 statement made under penalty of perjury stating the  
17 specific facts and circumstances for which relief is  
18 sought.

19        (e) Upon petition to a district court under this section,  
20 the court may allow a petition, complaint, motion, or other  
21 document to be filed identifying the petitioner as "jane doe" or



1 "john doe"; provided that the court finds that the "jane doe" or  
2 "john doe" filing is reasonably necessary to protect the privacy  
3 of the petitioner and will not unduly prejudice the prosecution  
4 or the defense of the action.

5 In considering a petition requesting a "jane doe" or "john  
6 doe" filing, the court shall weigh the petitioner's interest in  
7 privacy against the public interest in disclosure.

8 The court, only after finding clear and convincing evidence  
9 that would make public inspection inconsistent with the purpose  
10 of this section, may seal from the public all documents or  
11 portions of documents, including all subsequently filed  
12 documents, that would identify the petitioner or contain  
13 sufficient information from which the petitioner's identity  
14 could be discerned or inferred. Access to identifying  
15 information may be permitted to law enforcement or other  
16 authorized authority, in the course of conducting official  
17 business, to effectuate service, enforcement, or prosecution, or  
18 as ordered by the courts.

19 (f) Upon petition to a district court under this section,  
20 the court may temporarily restrain the person or persons named  
21 in the petition from harassing the petitioner or health care



1 worker upon a determination that there is probable cause to  
2 believe that a past act or acts of harassment have occurred or  
3 that a threat or threats of harassment may be imminent. The  
4 court may issue an ex parte temporary restraining order either  
5 in writing or orally; provided that oral orders shall be reduced  
6 to writing by the close of the next court day following oral  
7 issuance.

8 (g) A temporary restraining order that is granted under  
9 this section shall remain in effect at the discretion of the  
10 court for a period not to exceed ninety days from the date the  
11 order is granted, including, in the case where a temporary  
12 restraining order restrains any party from harassing a minor,  
13 for a period extending to a date after the minor has reached  
14 eighteen years of age. A hearing on the petition to enjoin  
15 harassment shall be held within fifteen days after the temporary  
16 restraining order is granted. If service of the temporary  
17 restraining order has not been effected before the date of the  
18 hearing on the petition to enjoin, the court may set a new date  
19 for the hearing; provided that the new date shall not exceed  
20 ninety days from the date the temporary restraining order was  
21 granted.



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

6           If the court finds by clear and convincing evidence that  
7 harassment as defined in paragraph (1) of that definition  
8 exists, it may enjoin for no more than three years further  
9 harassment of the petitioner[7] or health care worker, or that  
10 harassment as defined in paragraph (2) of that definition  
11 exists, it shall enjoin for no more than three years further  
12 harassment of the petitioner[7] or health care worker,  
13 including, in the case where any party is enjoined from  
14 harassing a minor, for a period extending to a date after the  
15 minor has reached eighteen years of age; provided that this  
16 subsection shall not prohibit the court from issuing other  
17 injunctions against the named parties even if the time to which  
18 the injunction applies exceeds a total of three years.

19           Any order issued under this section shall be served upon  
20 the respondent. For the purposes of this section, "served"  
21 means actual personal service, service by certified mail, or



1 proof that the respondent was present at the hearing at which  
2 the court orally issued the injunction.

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

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

13 (h) The court may grant the prevailing party in an action  
14 brought under this section costs and fees, including attorney's  
15 fees.

16 (i) A knowing or intentional violation of a restraining  
17 order or injunction issued pursuant to this section is a  
18 misdemeanor. The court shall sentence a violator to appropriate  
19 counseling and shall sentence a person convicted under this  
20 section as follows:





1           (1) For a violation of an injunction or restraining order  
2           that occurs after a conviction for a violation of the  
3           same injunction or restraining order, the person shall  
4           be sentenced to a mandatory minimum jail sentence of  
5           not less than forty-eight hours; and

6           (2) For any subsequent violation that occurs after a  
7           second conviction for violation of the same injunction  
8           or restraining order, the person shall be sentenced to  
9           a mandatory minimum jail sentence of not less than  
10          thirty days.

11          The court may suspend any jail sentence, except for the  
12          mandatory sentences under paragraphs (1) and (2), upon  
13          appropriate conditions, such as that the defendant remain  
14          alcohol- and drug-free, conviction-free, or complete court-  
15          ordered assessments or counseling. The court may suspend the  
16          mandatory sentences under paragraphs (1) and (2) where the  
17          violation of the injunction or restraining order does not  
18          involve violence or the threat of violence. Nothing in this  
19          section shall be construed as limiting the discretion of the  
20          judge to impose additional sanctions authorized in sentencing  
21          for a misdemeanor offense.



1 (j) Nothing in this section shall be construed to prohibit  
2 constitutionally protected activity.

3 (k) Nothing in this section shall be construed to:

4 (1) Create, expand, diminish, alter, or modify the duty,  
5 if any, of a person who employs or contracts with  
6 health care workers to provide a safe workplace for  
7 health care workers;

8 (2) Limit any other rights or remedies available to health  
9 care workers or persons who employ or contract with  
10 health care workers under law, including but not  
11 limited to the seeking of injunctive relief through  
12 methods other than the procedures set forth in this  
13 section;

14 (3) Affect or in any way limit the exclusivity provision  
15 in chapter 386; or

16 (4) Limit the rights of employees to organize pursuant to  
17 article XIII, sections 1 and 2, of the state  
18 constitution or sections 377-4 and 380-2.

19 (1) No civil liability shall attach or be imposed upon any  
20 person who employs or contracts with health care workers for:

21 (1) Initiating a proceeding under this section; or



1       (2) Investigating any alleged act or threat of harassment  
2       in the health care facility for purposes of  
3       determining the feasibility of or initiating a  
4       proceeding under this section.

5       (m) A person who employs or contracts with health care  
6       workers, or the person's agent who acts in accordance with this  
7       section, shall be presumed to be acting in good faith and,  
8       unless lack of good faith is shown by clear and convincing  
9       evidence, shall be immune from civil liability for actions taken  
10      under this chapter. No person who employs or contracts with  
11      health care workers, or agent of the person, who fails to use  
12      the procedures authorized by this section shall be liable for  
13      negligence nor shall evidence of a failure to use those  
14      procedures be admissible as evidence of negligence.

15      (n) No civil liability shall attach or be imposed upon any  
16      health care worker or witness for:

17      (1) Participating in an investigation for purposes of  
18      initiating a proceeding under this section; provided  
19      that this immunity shall not apply to an action taken  
20      with malicious intent or any statement made with  
21      knowledge of its falsity; or



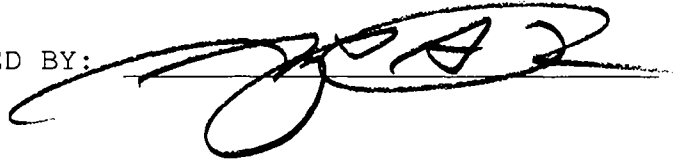
1        (2) Presenting statements or evidence in a judicial  
2        proceeding under this section."

3        SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the person who introduced the bill.

# S.B. NO. 2569

**Report Title:**

Health Care Workers; Acts of Violence; Report; Law Enforcement;  
Temporary Restraining Orders

**Description:**

Allows a person who employs or contracts with a health care worker who suffers an act of violence to report the event to law enforcement and petition for a temporary restraining order and injunction under certain circumstances.

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

