

## A Bill for an Act Relating to Automatic Restraining Orders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that family court congestion can be reduced by providing for orders that automatically take effect when parties file for divorce. In California and Massachusetts, for example, automatic orders prevent parties from disposing of or hiding assets and help to create a level playing field for unrepresented parties. The legislature further finds that unless one is knowledgeable about initiating a motion for a restraining order under section 580-10, Hawaii Revised Statutes, an unrepresented party is often unaware of the party's rights and obligations to maintain the status quo until a court hearing can be held. Moreover, those who have superior financial means may use their wealth to pressure those who have lesser financial means to settle for less than they are entitled to.

Nothing in this Act is intended to supersede any existing order entered pursuant to chapter 586, Hawaii Revised Statutes, or any similar domestic abuse protective order.

SECTION 2. Chapter 580, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§580- Automatic restraining order.** (a) Notwithstanding section 580-10, each party to a complaint for annulment, divorce, or separation shall automatically be subject to a restraining order that shall be effective with regard to the plaintiff upon the filing of the complaint and with regard to the defendant upon service of the summons and complaint or any other acceptance of service by the defendant. The restraining order shall specify that:

- (1) Neither party shall sell, transfer, encumber, conceal, assign, remove, or in any way dispose of any property, real or personal, belonging to or acquired by either party, except as:
  - (A) Required for reasonable expenses of living;
  - (B) Occurring in the ordinary and usual course of business;
  - (C) Required for payment of reasonable attorney's fees and costs in connection with the action;
  - (D) Occurring pursuant to a written agreement of both parties; or
  - (E) Required by order of the court;
- (2) Neither party shall incur any further debts 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; provided that this paragraph shall not apply to reasonable amounts of debt necessary for living and business expenses, including child educational expenses and reasonable litigation fees and costs for the pending action;
- (3) Neither party shall directly or indirectly change the beneficiary of any life insurance policy, pension or retirement plan, or pension or retirement investment account, except with the written consent of the other party or by order of the court;
- (4) Neither party shall directly or indirectly cause the other party or a minor child to be removed from coverage under an existing insurance policy, including medical, dental, life, automobile, and disability

ity insurance. The parties shall maintain all insurance coverage in full force and effect; and

- (5) Neither party shall remove a minor child of the parties from the island of that child's current residence nor remove a minor child of the parties from the school that child is currently attending.

(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 the motion without submitting to the jurisdiction of the court. The court shall proceed to hear and determine the motion as expeditiously as possible.

(c) It is a defense to any enforcement action under this section that an act of domestic abuse as defined in section 586-1 has occurred.

(d) Any sanction for any violation of this section shall remain within the discretion of the court, which shall take into account any instance of domestic abuse and the best interests of the child for violations of subsection (a)(5).

(e) The restraining order shall remain in effect during the pendency of the action, unless it is modified by agreement of the parties or by further order of the court.

(f) The provisions of the restraining order shall be issued by the family court and a copy thereof shall be served with every complaint to which it applies. If service is by publication, the public notice shall include a statement that a restraining order has been issued by the court. The provisions of the restraining order need not be reprinted in the public notice.

(g) The restraining order shall be vacated upon the entry of an annulment, divorce, or separation decree.

(h) An automatic restraining order shall not be imposed under this section if a written order was previously imposed under this chapter for a similar purpose."

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

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2018.

(Became law on July 10, 2018, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

#### Note

1. Edited pursuant to HRS §23G-16.5.