

JAN 23 2014

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# A BILL FOR AN ACT

RELATING TO ONLINE PROTECTION OF INDIVIDUAL RIGHTS.

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

1       SECTION 1. Section 481B-23, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "~~[+]§481B-23[+]~~ **Determining bad faith intent.** (a) ~~[In]~~  
4 Except as provided in subsection (c), in any action brought  
5 pursuant to this part, it shall be the claimant's burden to  
6 prove by a preponderance of the evidence the person's bad faith  
7 intent. In determining whether there is bad faith intent  
8 pursuant to section 481B-22, a court may consider factors,  
9 including, but not limited to, the following:

10       (1) The trademark or other intellectual property rights of  
11 the person, if any, in the domain name;

12       (2) The person's prior use, if any, of the domain name in  
13 connection with the bona fide offering of any goods or  
14 services;

15       (3) The person's bona fide noncommercial or fair use of  
16 the mark in a site accessible under the domain name;

17       (4) The person's intent to divert users from the mark  
18 owner's online location to a site accessible under the



1 domain name that could harm the goodwill represented  
2 by the mark, either for commercial gain or to tarnish  
3 or disparage the mark, by creating a likelihood of  
4 confusion as to the source, sponsorship, affiliation,  
5 or endorsement of the site;

6 (5) The extent to which the domain name consists of the  
7 legal name of the person or a name that is otherwise  
8 commonly used to identify the person;

9 (6) The person's offer to transfer, sell, or otherwise  
10 assign the domain name for financial gain without  
11 having used or having an intent to use, the domain  
12 name in the bona fide offering of any goods or  
13 services or the person's prior conduct indicating a  
14 pattern of such conduct;

15 (7) The person's provision of material and misleading  
16 false contact information when applying for the  
17 registration of the domain name, the person's  
18 intentional failure to maintain accurate contact  
19 information, or the person's prior conduct indicating  
20 a pattern of such conduct;

21 (8) The person's registration or acquisition of multiple  
22 domain names that the person knew were identical or



1           confusingly similar to marks of others that were  
2           distinctive at the time of registration of the domain  
3           names, without regard to the goods or services of the  
4           parties;

5           (9) The person's registration or acquisition of multiple  
6           domain names that the person knew were identical or  
7           confusingly similar to the name of another living  
8           person, without the person's consent; and

9           (10) The person sought or obtained consent from the  
10          rightful owner to register, traffic in, or use the  
11          domain name.

12          (b) Bad faith intent described in subsection (a) shall not  
13          be found in any case in which the court determines that the  
14          person alleged to be in violation of this part believed and had  
15          reasonable grounds to believe that the use of the domain name  
16          was a fair use or otherwise lawful.

17          (c) If the domain name consists solely of the legal name  
18          of the claimant or a name that is otherwise commonly used to  
19          identify the claimant, and if the claimant can demonstrate to a  
20          court of law with reasonable certainty the potential of  
21          immediate and irreparable harm to the claimant through the  
22          misuse of the domain name, the person alleged to be in violation



1 of this part shall have the burden to prove by a preponderance  
2 of the evidence that the domain name was not registered in bad  
3 faith or will not be used in an unlawful manner."

4 SECTION 2. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

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

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

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INTRODUCED BY:





# S.B. NO. 2958

**Report Title:**

Cybersquatting; Domain Names; Online Protection; Individual Rights; Bad Faith; Burden of Proof

**Description:**

Shifts the burden of proof from the claimant to the alleged violator in instances where the alleged violator registers a domain name that solely consists of the claimant's legal name or a name that is otherwise commonly used and the claimant can demonstrate with reasonable certainty the potential of immediate and irreparable harm through misuse of the domain name.

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