

JAN 24 2018

S.B. NO. 2994

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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1           SECTION 1. The purpose of this Act is to allow employers  
2 to obtain temporary restraining orders and injunctions to  
3 protect against harassment of employees or invitees at the  
4 employer's premises and worksites.

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

7           "§604-10.5 Power to enjoin and temporarily restrain  
8 harassment. (a) For the purposes of this section:

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

12           "Employee" means an individual who is required or directed  
13 to perform labor or other services or to go to work or be at any  
14 place of employment at any time for compensation or any  
15 volunteer, other noncompensated person, or independent  
16 contractor who performs services for an employer at the  
17 employer's premises or worksite.



1       "Employer" means a sole proprietor or any type of business  
2 organization; agency or instrumentality of the United States,  
3 the State, or any of its political subdivisions; trust or estate  
4 whether domestic or foreign, for-profit or not-for-profit;  
5 debtor in possession or receiver or trustee in bankruptcy; or  
6 the legal representative of any person, for whom labor or  
7 services are performed regularly by one or more employees.

8       "Harassment" means:

- 9       (1) Physical harm, bodily injury, assault, or the threat  
10       of imminent physical harm, bodily injury, or assault;  
11       or  
12       (2) An intentional or knowing course of conduct directed  
13       at an individual that seriously alarms or disturbs  
14       consistently or continually bothers the individual and  
15       serves no legitimate purpose; provided that such  
16       course of conduct would cause a reasonable person to  
17       suffer emotional distress.

18       "Invitee" means an individual who enters an employer's  
19 premises or worksite as a result of an express or implied  
20 invitation of the employer for their mutual gain or benefit.



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

3 (c) Any person who has been subjected to harassment may  
4 petition the district court of the district in which the  
5 petitioner resides for a temporary restraining order and an  
6 injunction from further harassment.

7 (d) Any employer whose employee or invitee has been  
8 subjected to harassment at the employer's premises or worksite,  
9 or harassment that can reasonably be foreseen to recur at a  
10 premises or worksite, may petition the district court of the  
11 district in which the premises or worksite is situated for a  
12 temporary restraining order and an injunction from further  
13 harassment at the premises or worksite; provided that no  
14 injunction shall be issued in derogation of chapter 380.

15 To the extent feasible, the employer shall consult the  
16 employee or invitee who was subject to the harassment prior to  
17 petitioning for a temporary restraining order and an injunction  
18 from further harassment; provided that an employee who is a  
19 subject of harassment and who is unwilling to participate in  
20 this process shall not face disciplinary action from the  
21 employer based on the employee's level of participation or



1 cooperation with the process; provided further that an employee  
2 organization that represents employees of the employer shall be  
3 allowed to intervene in a proceeding under this section.

4 [~~(d)~~] (e) A petition for relief from harassment shall be  
5 in writing and shall allege that a past act or acts of  
6 harassment may have occurred or that [~~threats of harassment make~~  
7 ~~it probable that~~] an act or acts of harassment may be  
8 imminent [~~+~~], and shall be accompanied by an affidavit made under  
9 oath or statement made under penalty of perjury stating the  
10 specific facts and circumstances for which relief is sought.

11 (f) A petition by an employer shall specify that acts or  
12 threats of harassment, or both, were or are likely to be carried  
13 out at the employer's premises or worksite.

14 [~~(e)~~] (g) Upon petition to a district court under this  
15 section, the court may allow a petition, complaint, motion, or  
16 other document to be filed identifying the petitioner as "jane  
17 doe" or "john doe"; provided that the court finds that the "jane  
18 doe" or "john doe" filing is reasonably necessary to protect the  
19 privacy of the petitioner and will not unduly prejudice the  
20 prosecution or the defense of the action.



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

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

15 [~~(f)~~] (h) Upon petition to a district court under this  
16 section, the court may temporarily restrain the person or  
17 persons named in the petition from harassing the petitioner or  
18 the person who is the subject of threats or harassment upon a  
19 determination that there is probable cause to believe that a  
20 past act or acts of harassment have occurred or that [~~a threat~~  
21 ~~or threats~~] an act or acts of harassment may be imminent. The



1 court may issue an ex parte temporary restraining order either  
2 in writing or orally; provided that oral orders shall be reduced  
3 to writing by the close of the next court day following oral  
4 issuance.

5 [~~g~~] (i) A temporary restraining order that is granted  
6 under this section shall remain in effect at the discretion of  
7 the court for a period not to exceed ninety days from the date  
8 the order is granted. A hearing on the petition to enjoin  
9 harassment shall be held within fifteen days after the temporary  
10 restraining order is granted. If service of the temporary  
11 restraining order has not been effected before the date of the  
12 hearing on the petition to enjoin, the court may set a new date  
13 for the hearing; provided that the new date shall not exceed  
14 ninety days from the date the temporary restraining order was  
15 granted.

16 The parties named in the petition may file or give oral  
17 responses explaining, excusing, justifying, or denying the  
18 alleged act or acts of harassment. The court shall receive all  
19 evidence that is relevant at the hearing and may make  
20 independent inquiry. If the respondent is a current employee of  
21 the petitioner, the court shall receive evidence concerning the



1 employer's decision to retain, terminate, or otherwise  
2 discipline the respondent.

3 If the court finds by clear and convincing evidence that  
4 [~~harassment~~]:

5 (1) Harassment as defined in paragraph (1) of that  
6 definition exists, it may enjoin for no more than  
7 three years further harassment of the petitioner[~~-~~] or  
8 [~~that harassment~~] the person who is the subject of  
9 threats or harassment; or

10 (2) Harassment as defined in paragraph (2) of that  
11 definition exists, it shall enjoin for no more than  
12 three years further harassment of the petitioner[+] or  
13 the person who is the subject of threats or  
14 harassment; provided that this paragraph shall not  
15 prohibit the court from issuing other injunctions  
16 against the named parties even if the time to which  
17 the injunction applies exceeds a total of three 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~~] means actual personal service, service by certified



1 mail, or proof that the respondent was present at the hearing at  
2 which 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)~~] (k).

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

16 [~~(i)~~] (k) A knowing or intentional violation of a  
17 restraining order or injunction issued pursuant to this section  
18 is a misdemeanor. The court shall sentence a violator to  
19 appropriate counseling and shall sentence a person convicted  
20 under this 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)]~~ (1) Nothing in this section shall be construed to  
2 prohibit constitutionally protected activity.

3           (m) Nothing in this section shall be construed as:

4           (1) Creating, expanding, diminishing, altering, or  
5           modifying the duty, if any, of an employer to provide  
6           a safe workplace for employees;

7           (2) Limiting any other rights or remedies available to an  
8           employer or employee under existing law, including but  
9           not limited to the seeking of injunctive relief  
10           through methods other than the procedures set forth in  
11           this section;

12           (3) Affecting or in any way limiting the exclusivity  
13           provision in chapter 386; or

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

17           (n) No civil liability shall attach or be imposed upon any  
18 employer for:

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

20           (2) Conducting an investigation of any alleged act or  
21           threat of violence or harassment in the workplace for



1 purposes of determining the feasibility of or  
2 initiating a proceeding under this section.

3 (o) An employer or an employer's agent who acts in  
4 accordance with this section shall be presumed to be acting in  
5 good faith and, unless lack of good faith is shown by clear and  
6 convincing evidence, shall be immune from civil liability for  
7 actions taken under this chapter. No employer or agent of an  
8 employer who fails to use the procedures authorized by this  
9 section shall be liable for negligence nor shall evidence of a  
10 failure to use those procedures be admissible as evidence of  
11 negligence.

12 (p) No civil liability shall attach or be imposed upon any  
13 employee or witness for:

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

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



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

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

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

7

INTRODUCED BY: *R. D. O'Neil*  
*by request*



# S.B. NO. 2994

**Report Title:**

Public Safety; Workplace Violence; Restraining Orders

**Description:**

Allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed at the employer's premises or worksite.

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

