

A Bill for an Act Relating to Crimes.

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

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART
EXTORTION**

Sec. 707- Definitions. For the purposes of this chapter: (1) “An extortionate means” is any means which involves the use, or an express or implicit threat of the use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(2) “Creditor”, with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

(3) “Debtor”, with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) “Repayment of any extension of credit” includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) “To collect an extension of credit” means to induce in any way any person to make repayment thereof.

(6) “To extend credit” means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

Sec. 707- Extortionate extension of credit; prima facie evidence. (1) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(2) In any prosecution under this chapter, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this section is nonexclusive and in no way limits the effect or applicability of subsection (1):

(a) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor:

(i) in the jurisdiction within which the debtor, if a natural person, resided; or

- (ii) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was made;
 - (b) The extension of credit was made at a rate of interest in excess of a yearly rate of forty-five per cent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which payment is applied first to the accumulated interest and the balance applied to the unpaid principal;
 - (c) At the time the extension of credit was made, the debtor reasonably believed that either:
 - (i) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or
 - (ii) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof; and
 - (d) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded \$100.
- (3) In any prosecution under this chapter, if evidence has been introduced tending to show the existence of any of the circumstances described in subparagraphs (2)(a) or (2)(b) of this section, and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

Sec. 707- Financing extortionate extensions of credit. "Financing extortionate extensions of credit" includes wilfully advancing money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit.

Sec. 707- Collection of extensions of credit by extortionate means. "Collection of extensions of credit by extortionate means" includes:

- (1) Knowingly participating in any way, or conspiring to do so, in the use of any extortionate means:
 - (a) To collect or attempt to collect any extension of credit; or
 - (b) To punish any person for the nonrepayment thereof.
- (2) In any prosecution under this chapter, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(3) In any prosecution under this chapter, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in subparagraph (2)(a) or subparagraph (2)(b) of this section and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of collection or attempt at collection.

Sec. 707- Extortion. A person commits extortion if he does any of the following:

- (1) Obtains, or exerts control over, the property or services of another with intent to deprive him of the property or services by threatening by word or conduct to:
 - (a) Cause bodily injury in the future to the person threatened or to any other person; or
 - (b) Cause damage to property; or
 - (c) Subject the person threatened or any other person to physical confinement or restraint; or
 - (d) Commit a penal offense; or
 - (e) Accuse some person of any offense or cause a penal charge to be instituted against some person; or
 - (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
 - (g) Reveal any information sought to be concealed by the person threatened or any other person; or
 - (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or
 - (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or
 - (k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships; or
- (2) Intentionally compels or induces another person to engage in conduct from which he has a legal right to abstain or to abstain from conduct in which he has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraphs (a) through (k) of this section; or
- (3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.

Sec. 707- Extortion in the first degree. (1) A person commits the offense of extortion in the first degree if he commits extortion:

- (a) Of property or services the value of which exceeds \$200 in total during any twelve-month period; or
 - (b) By making or financing any extortionate extension of credit, or by collecting any extension of credit by extortionate means.
- (2) Extortion in the first degree is a class B felony.

Sec. 707- Extortion in the second degree. (1) A person commits the offense of extortion in the second degree if he commits extortion:

- (a) Of property or services the value of which exceeds \$50 during any twelve-month period;
 - (b) As set forth in section 707- (2).
- (2) Extortion in the second degree is a class C felony.

Sec. 707- Extortion in the third degree. (1) A person commits the offense of extortion in the third degree if he commits extortion of property or services.

- (2) Extortion in the third degree is a misdemeanor.

Sec. 707- Firearms, explosives, and dangerous weapons. Extortion in any degree is a class A felony when a firearm, explosive, or any dangerous weapon is immediately available and is physically used as part of the threat.

Sec. 707- Defenses to extortion. (1) It is a defense to a prosecution for extortion as defined by paragraph (1) of section 707- that the defendant:

- (a) Was unaware that the property or service was that of another; or
- (b) Believed that he was entitled to the property or services under a claim or right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse it is a defense to a prosecution for extortion under paragraph (1) of section 707- that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, or money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) It is an affirmative defense to a prosecution for extortion as defined by paragraphs (1) and (2) of section 707- and as further defined by subparagraphs (e), (f), (g), and (i), that the defendant believed the threatened accusation, penal charge, or exposure to be true, or the proposed action of a public servant was justified, and that his sole intention was to compel or induce the victim to give property or services to the defendant due him as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, or to induce the victim to take reasonable action to prevent or to remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant in circumstances to which the threat relates.

(5) In a prosecution for extortion as defined by paragraph (1) of section 707- , it is not a defense that the defendant has an interest in the property if the owner has an

interest in the property to which the defendant is not entitled.”

SECTION 2. Section 707-724, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 707-725, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 708-800, Hawaii Revised Statutes, is amended by deleting the definition “extortion”.

SECTION 5. Section 708-830 is amended to read as follows:

“**Sec. 708-830 Theft.** A person commits theft if he does any of the following:

- (1) Obtains or exerts unauthorized control over property. He obtains, or exerts control over, the property of another with intent to deprive him of the property.
- (2) Property obtained or control exerted through deception. He obtains, or exerts control over, the property of another by deception with intent to deprive him of the property.
- (3) Appropriation of property. He obtains, or exerts control over, the property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, he fails to take reasonable measures to discover and notify him.
- (4) Obtaining services by deception. He intentionally obtains services, known by him to be available only for compensation, by deception, false token, or other means to avoid payment for the services. Where compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.
- (5) Diversion of services. Having control over the disposition of services of another to which he is not entitled, he intentionally diverts those services to his own benefit or to the benefit of a person not entitled thereto.
- (6) Failure to make required disposition of funds.
 - (a) He intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from his own property reserved in equivalent amount, and deals with the property as his own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant’s failure to make the required payment or disposition. A person’s status as an officer or employee of the government or a financial institution is prima facie evidence that he knows his legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that he has intentionally dealt with the property as his own.
 - (b) He obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposi-

tion of funds to a third person on account of the employment, and he intentionally fails to make the payment or disposition at the proper time.

- (7) Receiving stolen property. He intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, he acquires the property for a consideration which he knows is far below its reasonable value.
- (8) Shoplifting.
- (a) He conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.
 - (b) He alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.
 - (c) He transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

The unaltered price or name tag or other marking on goods or merchandise, or duly identified photographs thereof, shall be prima facie evidence of value and ownership of such goods or merchandise. Photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any proceedings, hearings, and trials for shoplifting, to the same extent as the goods or merchandise themselves."

SECTION 6. Section 708-831, Hawaii Revised Statutes, is amended by amending subsection (2) as follows:

"(2) Theft in the first degree is a class C felony."

SECTION 7. Section 708-832, Hawaii Revised Statutes, is amended by amending subsection (2) as follows:

"(2) Theft in the second degree is a misdemeanor."

SECTION 8. Section 708-834, Hawaii Revised Statutes, is amended to read as follows:

"Sec 708-834 Defenses: unawareness of ownership; claim of right; household belongings. (1) It is a defense to a prosecution for theft that the defendant:

- (a) Was unaware that the property or service was that of another; or
- (b) Believed that he was entitled to the property or services under a claim of right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for theft of property that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles,

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money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.”

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 10. This Act shall take effect upon its approval.

(Approved May 25, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.