

ACT 225

S.B. NO. 946

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Chapter 634, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ANONYMOUS FILINGS

§634- Anonymous filings. (a) Upon petition to a court under this section, the court may allow a petition, complaint, motion, or other document to be filed by a party identifying the parties as “jane doe” or “john doe”; provided that when deciding to permit a “jane doe” or “john doe” filing, the court may consider factors including:

- (1) The severity of the petitioner’s injury;
- (2) The reasonableness of the petitioner’s fears of reprisal;
- (3) The petitioner’s vulnerability to retaliation from the action;
- (4) The risk of prejudice to the other party; and
- (5) Whether the public interest would be served by allowing the petitioner to remain anonymous.

(b) If there are compelling reasons sufficient to outweigh the public interest in the disclosure of the parties and it is the belief of the court that the par-

ties' court files may become a vehicle for improper use if not made anonymous, the court may seal from the public all documents or portions of documents, including all subsequently filed documents, that would identify the parties or contain sufficient information from which the parties' identity could be discerned or inferred."

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

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

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

"Harassment" means:

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

(b) The district courts shall have the power to enjoin [~~or~~], prohibit, or temporarily restrain harassment.

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

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

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

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

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

(e) (f) Upon petition to a district court under this section, the court may temporarily restrain the person or persons named in the petition from harassing the petitioner upon a determination that there is probable cause to believe that a past act or acts of harassment have occurred or that a threat or threats of harassment may be imminent. The court may issue an ex parte temporary restraining

order either in writing or orally; provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.

~~[(f)]~~ (g) A temporary restraining order that is granted under this section shall remain in effect at the discretion of the court for a period not to exceed ninety days from the date the order is granted. A hearing on the petition to enjoin harassment shall be held within fifteen days after the temporary restraining order is granted. ~~[In the event that]~~ If service of the temporary restraining order has not been effected before the date of the hearing on the petition to enjoin, the court may set a new date for the hearing; provided that the new date shall not exceed ninety days from the date the temporary restraining order was granted.

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

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more than three years further harassment of the petitioner, or that harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this section shall be served upon the respondent. For the purposes of this section, "served" shall mean actual personal service, service by certified mail, or proof that the respondent was present at the hearing ~~[(h)]~~ at which the court orally issued the injunction.

Where service of a restraining order or injunction has been made or where the respondent is deemed to have received notice of a restraining order or injunction order, any knowing or intentional violation of the restraining order or injunction order shall subject the respondent to the provisions in subsection ~~[(h)-]~~ (i).

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

~~[(g)]~~ (h) The court may grant the prevailing party in an action brought under this section~~[-]~~ costs and fees, including attorney's fees.

~~[(h)]~~ (i) A knowing or intentional violation of a restraining order or injunction issued pursuant to this section is a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

- (1) For a violation of an injunction or restraining order that occurs after a conviction for a violation of the same injunction or restraining order, ~~[a violator]~~ the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours; and
- (2) For any subsequent violation that occurs after a second conviction for violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon appropriate conditions, such as that the defendant remain ~~[alcohol]~~ alcohol- and drug-free, conviction-free, or complete court-ordered assessments or counseling. The court may suspend the mandatory sentences under paragraphs (1) and (2) where the violation of the injunction or restraining order does not involve violence or the threat of violence. Nothing in

this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense.

~~[(i)]~~ (j) Nothing in this section shall be construed to prohibit constitutionally protected activity.”

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

SECTION 4. This Act shall take effect on January 1, 2012.

(Became law on July 12, 2011, without the governor’s signature, pursuant to Art III, §16, State Constitution.)