

ACT 13

S.B. NO. 2780

A Bill for an Act Relating to the Power of Arrest.

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

SECTION 1. The legislature finds that Act 201, Session Laws of Hawaii 1980, codified as section 803-16, Hawaii Revised Statutes, conferred upon officers of the United States Customs Service and the Immigration and Naturalization Service the power to arrest under state law. Act 201 helped to provide additional protection at state airports and harbors by authorizing customs and immigration officers to assist in maintaining law and order. These officers were often able to observe suspicious activities but were not authorized to take action pursuant to state law prior to the enactment of Act 201.

In 2003, the Department of Homeland Security was created. Twenty-three agencies were established under this department, including United States Immigration and Customs Enforcement (ICE), United States Customs and Border Protection (CBP), and United States Citizenship and Immigration Services (USCIS). These agencies include the law enforcement arms of the agencies formerly known as the United States Customs Service and the Immigration and Naturalization Service.

Currently, United States Immigration and Customs Enforcement-Homeland Security Investigations (Homeland Security Investigations), the criminal investigations component of United States Immigration and Customs Enforcement, is the principal investigative arm of the Department of Homeland Security. Homeland Security Investigations is responsible for investigating transnational crime and threats, specifically those criminal organizations that exploit the global infrastructure through which international trade, travel, and finance operate. The legislature notes that Homeland Security Investigations has the second largest number of federal law enforcement officers in the State, and its special agents and criminal analysts provide, on a daily basis, operational and investigative support to law enforcement entities across the State.

Act 95, Session Laws of Hawaii 2008, amended section 803-16, Hawaii Revised Statutes, to reflect changes made to certain federal agencies. Act 95 also established section 803-17, Hawaii Revised Statutes, which grants arrest powers to deputies of the United States Marshal Service. While Act 95 granted authority to deputy marshals, and amended section 803-16, Hawaii Revised Statutes, to reference United States Customs and Border Protection and United States Citizenship and Immigration Services, the Act did not include Homeland Security Investigations. Furthermore, by including officers of the United States Citizenship and Immigration Services, Act 95 granted arrest powers to an agency that does not have the authority to make arrests under federal law. In contrast, United States Immigration and Customs Enforcement-Homeland Security Investigations special agents and United States Customs and Border Protection officers do have this authority.

The legislature further finds that the grant of limited arrest powers, under state law, to agents of United States Immigration and Customs Enforcement-Homeland Security Investigations would promote enhanced collaboration with state law enforcement counterparts to protect national security, prevent crimes of exploitation, combat financial crimes, investigate cybercrime and other threats, and ensure public safety. The legislature recognizes that state and county law enforcement agencies often rely on federal law enforcement agencies for cooperation and support in responding to natural disasters, participating in joint law enforcement task forces, and addressing major or national events.

Accordingly, the purpose of this Act is to:

- (1) Update the list of federal agencies whose law enforcement officers may make arrests for certain offenses under state law by adding United States Immigration and Customs Enforcement-Homeland Security Investigations and deleting United States Citizenship and Immigration Services from the list; and
- (2) Update references to the titles of the heads of the district offices for the listed federal agencies and the names of these agencies, including United States Customs and Border Protection.

SECTION 2. Section 803-16, Hawaii Revised Statutes, is amended to read as follows:

“§803-16 [Officer] Law enforcement officers of the United States Immigration and Customs Enforcement-Homeland Security Investigations or United States Customs and Border Protection [Service or Citizenship and Immigration Services]; arrest powers. [A] A law enforcement officer of the United States Immigration and Customs Enforcement-Homeland Security Investigations or United States Customs and Border Protection [Service or the Citizenship and Immigration Services], without a warrant, may arrest a person if:

- (1) The officer is on duty;
- (2) One or more of the following situations exists:
 - (A) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 707, against the officer or against any other person in the presence of the officer;
 - (B) The person commits an offense against public order, defined and punishable under chapter 711, in the presence of the officer;
 - (C) The officer has probable cause to believe that a crime as provided in subparagraph (A) or (B) has been committed and has probable cause to believe that the person to be arrested has committed the crime;
 - (D) The officer has probable cause to believe that a felony has been committed and probable cause to believe that the person to be arrested has committed the felony; or
 - (E) The officer has received information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a law enforcement officer holds a warrant for the person's arrest; and
- (3) The ~~[Director of the Hawaii district office for the]~~ special agent in charge, United States Immigration and Customs Enforcement-Homeland Security Investigations Honolulu, or the port director of the area port of Honolulu of the United States Customs and Border Protection [Service, or the Citizenship and Immigration Services], as the case may be, certifies to the State that the officer has received proper training within the agency to enable that officer to [enforce or administer] make arrests as provided in this section.”

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

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

(Approved April 27, 2022.)