

JAN 19 2018

A BILL FOR AN ACT

RELATING TO AUTOMATIC RESTRAINING ORDERS.

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

1 SECTION 1. The legislature finds that family court
2 congestion can be reduced by providing for orders that
3 automatically take effect when parties file for divorce. In
4 California and Massachusetts, for example, automatic orders
5 prevent parties from disposing of or hiding assets and help to
6 create a level playing field for unrepresented parties. The
7 legislature further finds that unless one is knowledgeable about
8 initiating a motion for a restraining order under section
9 580-10, Hawaii Revised Statutes, an unrepresented party is often
10 unaware of the party's rights and obligations to maintain the
11 status quo until a court hearing can be held. Moreover, those
12 who have superior financial means may use their wealth to
13 pressure those who have lesser financial means to settle for
14 less than they are entitled to.

15 Nothing in this Act is intended to supersede any existing
16 order entered pursuant to chapter 586, Hawaii Revised Statutes,
17 or any similar domestic abuse protective order.



1 SECTION 2. Chapter 580, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§580- Automatic restraining order. (a) Each party to
5 a complaint for annulment, divorce, or separation shall
6 automatically be subject to a restraining order that shall be
7 effective with regard to the plaintiff upon the filing of the
8 complaint and with regard to the defendant upon service of the
9 summons and complaint or any other acceptance of service by the
10 defendant. The restraining order shall specify that:

11 (1) Neither party shall sell, transfer, encumber, conceal,
12 assign, remove, or in any way dispose of any property,
13 real or personal, belonging to or acquired by either
14 party, except as:

15 (A) Required for reasonable expenses of living;

16 (B) Occurring in the ordinary and usual course of
17 business;

18 (C) Required for payment of reasonable attorney's
19 fees and costs in connection with the action;

20 (D) Occurring pursuant to a written agreement of both
21 parties; or



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- 1 (E) Required by order of the court;
- 2 (2) Neither party shall incur any further debts that would
3 burden the credit of the other party, including but
4 not limited to further borrowing against any credit
5 line secured by the marital residence or unreasonably
6 using credit cards or cash advances against credit or
7 bank cards; provided that this paragraph shall not
8 apply to reasonable amounts of debt necessary for
9 living and business expenses, including child
10 educational expenses and reasonable litigation fees
11 and costs for the pending action;
- 12 (3) Neither party shall directly or indirectly change the
13 beneficiary of any life insurance policy, pension or
14 retirement plan, or pension or retirement investment
15 account, except with the written consent of the other
16 party or by order of the court;
- 17 (4) Neither party shall directly or indirectly cause the
18 other party or a minor child to be removed from
19 coverage under an existing insurance policy, including
20 medical, dental, life, automobile, and disability



1 insurance. The parties shall maintain all insurance
2 coverage in full force and effect; and
3 (5) Neither party shall remove a minor child of the
4 parties from the island of that child's current
5 residence nor remove a minor child of the parties from
6 the school that child is currently attending.

7 (b) After service of the complaint for annulment, divorce,
8 or separation, the defendant may file a motion to set aside or
9 modify the restraining order and may choose to file the motion
10 without submitting to the jurisdiction of the court. The court
11 shall proceed to hear and determine the motion as expeditiously
12 as possible.

13 (c) It is a defense to any enforcement action under this
14 section that an act of domestic abuse as defined in section 586-
15 1 has occurred.

16 (d) Any sanction for any violation of this section shall
17 remain within the discretion of the court, which shall take into
18 account any instance of domestic abuse and the best interests of
19 the child for violations of subsection (a)(5).



1 (e) The restraining order shall remain in effect during
2 the pendency of the action, unless it is modified by agreement
3 of the parties or by further order of the court.

4 (f) The provisions of the restraining order shall be
5 issued by the family court and a copy thereof shall be served
6 with every complaint to which it applies. If service is by
7 publication, the public notice shall include a statement that a
8 restraining order has been issued by the court. The provisions
9 of the restraining order need not be reprinted in the public
10 notice.

11 (g) The restraining order shall be vacated upon the entry
12 of an annulment, divorce, or separation decree.

13 (h) An automatic restraining order shall not be imposed
14 under this section if a written order was previously imposed
15 under this chapter for a similar purpose."

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

19 SECTION 4. New statutory material is underscored.



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1 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Automatic Restraining Orders; Annulment; Divorce; Separation

Description:

Automatically imposes a restraining order upon parties filing for annulment, divorce, or separation to preserve the financial assets of the parties and their dependents.

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

