

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

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January 24, 2018

TO: Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary

FROM: Dyan K Mitsuyama, Vice-Chair
Family Law Section of the Hawaii State Bar Association
E-Mail: dyan@mitsuyamaandrebman.com
Phone: 545-7035

HEARING DATE: January 25, 2018 at 2:00 p.m.

RE: Testimony in Support of HB 1614 Relating to Automatic Restraining Orders

Dear Chair Nishimoto & Vice Chair San Buenaventura and fellow committee members:

I am Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for more than 19 years.

I submit testimony today in support of HB 1614 on behalf of the Family Law Section of the Hawaii State Bar Association, which is comprised of approximately 135 licensed attorneys statewide all practicing or expressing an interest in practicing family law. Unfortunately I am unable to appear in person, but am available for questions by phone at any time.

The Family Law Section of the Hawaii Bar Association supports HB 1614 as it clearly emphasizes and reinforces the current law regarding annulment, divorce, and separation matters, particularly in the area of dividing assets and debts. This measure makes great sense as it seeks to guard against asset dissipation and/or concealment which can happen all too frequently in divorces. It also encourages parties to place everything on the table so to speak in the hopes of simplifying the marshalling, accounting and ultimate division of assets and debts.

This law will eliminate the necessity to file separate motions for these types of relief at the onset of any divorce case which will in turn reduce the amount of court proceedings at Family Court.

It will allow Family Court to spend time on more urgent, more pressing issues regarding children and families.

This measure will also insure consistency with all circuits within the State of Hawaii.

In short, this measure is a long overdue.

For the reasons stated above, the Family Law Section supports HB 1614.

Thank you for your time.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

DATE: JANUARY 24, 2018

TO: STATE OF HAWAII, HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
REP. SCOTT Y. NISHIMOTO, CHAIR
REP. JOY A. SAN BUENAVENTURA, VICE CHAIR
REP. TOM BROWER
REP. GREGG TAKAYAMA
REP. CHRIS LEE
REP. BOB MCDERMOTT
REP. DEE MORIKAWA
REP. CYNTHIA THIELEN

FROM: STACEY MONIZ, EXECUTIVE DIRECTOR
HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

RE: TESTIMONY IN OPPOSITION AGAINST HB1614

Aloha:

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 22 member organizations across the state, I am submitting testimony opposing HB1614 which calls for an automatic restraining order in cases of annulment, divorce or separation.

We understand the intent of the bill is to protect the parties, and there are special protections for victims of domestic violence, however, we are concerned about abusers turning this to their advantage and have general concerns about any kind of automatic orders, especially in cases of domestic violence.

As stated above, HSCADV opposes HB1614.

Thank you for your consideration of our feedback. If you would like to discuss this or have questions, I can be reached at 808.832.9613x4 or via email at smoniz@hscadv.org.

~ Together we can do amazing things ~

LATE

HB-1614

Submitted on: 1/24/2018 4:16:39 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Domestic Violence Survivor Advocate	Comments	No

Comments:

Good Afternoon Chair Nishimoto, Vice Chair San Buenaventura and Judiciary Committee Members,

Thank you for this opportunity to offer the following suggestions and comments on HB1614, as I am compelled to do, as a Domestic Violence Survivor Advocate:

If HB1614's intention is to curtail **all** separating or divorcing parties from divesting jointly held or familial materials and financial holdings, then I would propose that the title of this action be changed from *Automatic* Restraining Order to **Financial** Restraining Order so as not to confuse this particular RO (restraining order) from a domestic violence (DV) RO that is ordered when an act of abuse has occurred and to prevent an act of abuse from recurring. This clarification is particularly important because non-abusive and non-violent parties should not be given the appearance as such.

Because the face of this proposed legislation appears to be universal (to include *all* separating/divorcing cases in Hawaii, DV cases included) I must ask that the following sections be stricken from Page 4:

(5) Neither party shall remove a minor child of the parties from the island of that child's current residence nor remove a minor child of the parties from the school that child is currently attending.

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

Then to include language to the effect of: "*If domestic violence or family abuse is discovered to be the cause for the separation, annulment or divorce the victim will be excused from this section for accessing financial resources and materials if used to escape the abuser/an abusive situation.*"

If these changes are not implemented, HB1614 will be misused by abusers and deal a crushing blow to DV victims because it will keep mothers and their children hostage in abusive relationships and home environments; without the resources to flee and without

the ability to take their children with them to safety, HB1614 will keep victims under the thumb of their abusers with nowhere to go.

If HB1614 is allowed to be implemented as-is and children in DV situations are not allowed to be removed from the school they're currently attending, how fast do you think it'll take an abuser to locate his "wayward Mrs" when she flees? **It was 10 years ago this month that Janel Tupuola's abuser hunted her down at her children's daycare in Kailua and viciously killed her in the street.** Please, let's not do Janel, her surviving children and family the dishonor of allowing HB1614 to go forward as-is. **Please remove sections (5) and (c) from this bill and include some form of domestic violence exemption** so it will not inadvertently end up hurting or killing any more women and children trying to live abuse-free lives.

Thank you one again for this opportunity to provide suggestions and comments.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate



LATE

TO; Chair Nishimoto
Vice Chair San Buenaventura
Members of the Committee

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: HB 1614 Automatic Restraining Orders

Domestic violence remains poorly understood. The cunning tactics used by abusers are sometimes difficult to believe or impossible to absorb.

We are not in favor of the Court issuing an automatic restraining order in any divorce, annulment or separation. It would seem to us that judges should have the discretion to determine, after hearing evidence, on a case by case basis whether an order should be issued pertaining to sale or transfer of any property or assets.

Sometimes a victim may not anticipate the harm that can befall her (him) if a partner decides to hide assets or claim marital assets. It would seem that a better way could be devised to put protections into place to guard against such exploitation. On the other hand, incurring debt may be an inevitable outcome for victims, as they are more often without resources, and too often, return to their abusers because they do not have sufficient resources to sustain independence or support for the children. On page 3, section (2) the word "unreasonably" is used to set a standard – unreasonable can be interpreted to mean different things by the parties, and by the system, depending on the parties' assertions/stories in a divorce or annulment.

Developing statute that allows for "automatic" anything may seem like a protective endeavor, and yet can have the opposite outcome. The language, "it is a defense to any enforcement action under this section that an act of domestic abuse as defined in section 586-1 has occurred," would be imperative, and yet may not provide the safeguard intended.



Prohibiting a victim from fleeing with a child (ren) may create danger. We are also opposed to the prohibition of parties to remove the children from the island or from the school they are attending. The use of the term “indirectly” on page 3, section (4) is not clear; how does a person indirectly remove a child from an insurance policy or other health benefit? There are safety considerations that must be taken into consideration and assessed appropriately. There may be real needs to escape that should not result in punishment of a victim acting in the best interests of herself (himself) and her (his) children.

Moreover, this proposal has a double-edge sword effect. While it intends to “create a level playing field for unrepresented parties” and protect “those who have lesser financial needs,” this scenario will only apply when the filing party is the one who has “superior financial means.” This proposal is a detriment to those who do not have the financial means and are seeking protection for their children. They will be facing an additional automatic financial and custodial constraint by simply filing a complaint for annulment, divorce, or separation. Meanwhile, the opposing party, until they are served, still has the liberty to dispose of personal and real property from the marriage, continue to incur in debts and, most concerning, are allowed to remove the minor child from the island. As a result, this can increase avoidance of service while the filing party continues to be submitted under the automatic restraint.

It also appears that an automatic restraining order will be issued, even if an order was granted under HRS 586. Finally, it is not clear why these requirements are only applied to those who have entered into legal marriage. Parties with children in common and partners living in a shared household would be exempt from the conditions imposed in this Bill.

We rely on our Courts to have judges well trained and equipped to address property and safety issues.

Thank you.

LATE

HB-1614

Submitted on: 1/24/2018 5:46:06 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bryne		Support	No

Comments:

No comments.

LATE

HB-1614

Submitted on: 1/25/2018 2:26:44 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dave Kisor		Support	No

Comments:

Fortunately I didn't need this, but I've know quite a few who would have benefitted from this.