

JAN 28 2015

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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1           SECTION 1: The purpose of this Act is to allow employers  
2 to obtain temporary restraining orders and injunctions to  
3 protect against harassment of employees or invitees at  
4 worksites.

5           This Act shall be referred to as the Hawaii Worker  
6 Protection and Safety Act.

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

9           "**§604-10.5 Power to enjoin and temporarily restrain**  
10 **harassment.** (a) For the purposes of this section:

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

14           "Employee" means any natural person who is required,  
15 directed, permitted, or suffered by any employer to engage in  
16 any employment, or to go to work or be at any time in any place  
17 of employment, for compensation, or any volunteer or other



1 noncompensated person, or any independent contractor, who  
2 performs services for an employer at the employer's worksite.

3 "Employer" means any individual or type of organization,  
4 including any agency or instrumentality of the United States,  
5 the State, or any county, or any partnership, association,  
6 trust, or estate, or private, public, or quasi-public  
7 corporation, whether domestic or foreign, for-profit or not-for-  
8 profit, or any debtor in possession or receiver or trustee in  
9 bankruptcy, or the legal representative of a deceased person,  
10 who has one or more regular employees in the employer's  
11 employment.

12 "Harassment" means:

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



1 (b) The district courts shall have the power to enjoin,  
2 prohibit, or temporarily restrain harassment.

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

7 (d) Any employer whose employee or invitee has been  
8 subjected to harassment at a worksite, or harassment that can  
9 reasonably be construed will occur at a worksite, may petition  
10 the district court of the district in which the worksite is  
11 situated for a temporary restraining order and an injunction  
12 from further harassment at the worksite; provided that:

13 (1) No injunction shall be issued in derogation of chapter  
14 380; and

15 (2) If the employer's petition is denied or is set aside  
16 on appeal, the employer shall pay the defendant's  
17 attorney's fees and costs to the defendant or the  
18 defendant's duly designated representative.

19 To the extent feasible, the employer shall consult the  
20 employee or employees who were subject to the harassment prior  
21 to petitioning for a temporary restraining order and an



1 injunction from further harassment; provided that an employee  
2 who is a target of harassment and who is unwilling to  
3 participate in this process shall not face disciplinary action  
4 from the employer based on the employee's level of participation  
5 or cooperation with this process; provided further that an  
6 employee organization that represents employees of the employer  
7 shall be allowed to intervene in a proceeding under this  
8 section.

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

16       (f) A petition by an employer shall specify that acts or  
17 threats of harassment, or both, were or are likely to be carried  
18 out at a worksite.

19       ~~[(e)]~~ (g) Upon petition to a district court under this  
20 section, the court may allow a petition, complaint, motion, or  
21 other document to be filed identifying the petitioner as "jane



1 doe" or "john doe"; provided that the court finds that the "jane  
2 doe" or "john doe" filing is reasonably necessary to protect the  
3 privacy of the petitioner and will not unduly prejudice the  
4 prosecution or the defense of the action.

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

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

19 ~~[(f)]~~ (h) Upon petition to a district court under this  
20 section, the court may temporarily restrain the person or  
21 persons named in the petition from harassing the petitioner or



1 the person who is the target of threats or harassment upon a  
2 determination that there is probable cause to believe that a  
3 past act or acts of harassment have occurred or that [~~a threat~~  
4 ~~or threats~~] an act or acts of harassment may be imminent. The  
5 court may issue an ex parte temporary restraining order either  
6 in writing or orally; provided that oral orders shall be reduced  
7 to writing by the close of the next court day following oral  
8 issuance.

9 [~~g~~] (i) A temporary restraining order that is granted  
10 under this section shall remain in effect at the discretion of  
11 the court for a period not to exceed ninety days from the date  
12 the order is granted. A hearing on the petition to enjoin  
13 harassment shall be held within fifteen days after the temporary  
14 restraining order is granted. If service of the temporary  
15 restraining order has not been effected before the date of the  
16 hearing on the petition to enjoin, the court may set a new date  
17 for the hearing; provided that the new date shall not exceed  
18 ninety days from the date the temporary restraining order was  
19 granted.

20 The parties named in the petition may file or give oral  
21 responses explaining, excusing, justifying, or denying the



1 alleged act or acts of harassment. The court shall receive all  
2 evidence that is relevant at the hearing and may make  
3 independent inquiry. If the defendant is a current employee of  
4 the petitioner, the judge shall receive evidence concerning the  
5 employer's decision to retain, terminate, or otherwise  
6 discipline the defendant.

7 If the court finds by clear and convincing evidence that  
8 [~~harassment~~]:

9 (1) Harassment as defined in paragraph (1) of that  
10 definition exists, it may enjoin for no more than  
11 three years further harassment of the petitioner[7] or  
12 [~~that harassment~~] the person who is the target of  
13 threats or harassment; or

14 (2) Harassment as defined in paragraph (2) of that  
15 definition exists, it shall enjoin for no more than  
16 three years further harassment of the petitioner[7] or  
17 the person who is the target of threats or harassment;  
18 provided that this paragraph shall not prohibit the  
19 court from issuing other injunctions against the named  
20 parties even if the time to which the injunction  
21 applies exceeds a total of three years.



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

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

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

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

19 [~~(i)~~] (k) A knowing or intentional violation of a  
20 restraining order or injunction issued pursuant to this section  
21 is a misdemeanor. The court shall sentence a violator to





1 appropriate counseling and shall sentence a person convicted  
2 under this section as follows:

3 (1) For a violation of an injunction or restraining order  
4 that occurs after a conviction for a violation of the  
5 same injunction or restraining order, the person shall  
6 be sentenced to a mandatory minimum jail sentence of  
7 not less than forty-eight hours; and

8 (2) For any subsequent violation that occurs after a  
9 second conviction for violation of the same injunction  
10 or restraining order, the person shall be sentenced to  
11 a mandatory minimum jail sentence of not less than  
12 thirty days.

13 The court may suspend any jail sentence, except for the  
14 mandatory sentences under paragraphs (1) and (2), upon  
15 appropriate conditions, such as that the defendant remain  
16 alcohol- and drug-free, conviction-free, or complete court-  
17 ordered assessments or counseling. The court may suspend the  
18 mandatory sentences under paragraphs (1) and (2) where the  
19 violation of the injunction or restraining order does not  
20 involve violence or the threat of violence. Nothing in this  
21 section shall be construed as limiting the discretion of the



1 judge to impose additional sanctions authorized in sentencing  
2 for a misdemeanor offense.

3 ~~[(j)]~~ (1) Nothing in this section shall be construed to  
4 prohibit constitutionally protected activity.

5 (m) Nothing in this section shall be construed as:

6 (1) Creating, expanding, diminishing, altering, or  
7 modifying the duty, if any, of an employer to provide  
8 a safe workplace for employees;

9 (2) Limiting any other rights or remedies available to an  
10 employer or employee under existing law, including but  
11 not limited to the seeking of injunctive relief  
12 through methods other than the procedures set forth in  
13 this section;

14 (3) Affecting or in any way limiting the exclusivity  
15 provision in chapter 386; or

16 (4) Limiting the rights of employees to organize pursuant  
17 to article XIII, sections 1 and 2, of the state  
18 constitution or sections 377-4 and 380-2.

19 (n) No civil liability shall attach or be imposed upon any  
20 employer for:

21 (1) Initiating a proceeding under this section; or



1       (2) Conducting an investigation of any alleged act or  
2       threat of violence or harassment in the workplace for  
3       purposes of determining the feasibility of or  
4       initiating a proceeding under this section.

5       (o) An employer or an employer's agent who acts in  
6       accordance with this section shall be presumed to be acting in  
7       good faith and, unless lack of good faith is shown by clear and  
8       convincing evidence, shall be immune from civil liability for  
9       actions taken under this chapter. No employer or agent of an  
10      employer who fails to utilize the procedures authorized by this  
11      section shall be liable for negligence nor shall evidence of a  
12      failure to utilize those procedures be admissible as evidence of  
13      negligence.

14      (p) No civil liability shall attach or be imposed upon any  
15      employee or witness for:

16      (1) Participating in an employer's investigation for  
17      purposes of initiating a proceeding under this  
18      section; provided that this immunity shall not apply  
19      to an action taken with malice or a statement made  
20      with knowledge of its falsity; or





1        (2) Presenting statements or evidence in a judicial  
2        proceeding under this section."

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

6        SECTION 4. Statutory material to be repealed is bracketed  
7        and stricken. New statutory material is underscored.

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

9

INTRODUCED BY:   




# S.B. NO. 1213

**Report Title:**

Public Safety; Workplace Violence; Restraining Orders

**Description:**

Allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed in connection with a worksite.

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

