



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair

Representative Joy A. San Buenaventura, Vice Chair

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State Capitol, Conference Room 325

By

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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2200, House Draft 1, Relating to Public Safety.

Purpose: Allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed at the employer's premises or worksite, provided that the provisions do not apply to the Department of Labor and Industrial Relations or any of its employees with investigatory duties and responsibilities. (HB2200 HD1)

Judiciary's Position:

The Judiciary takes no position on the intent of House Bill No. 2200, HD1, but notes that the current language of the Bill may (1) impose unintended costs and complications for employers; (2) create uncertainty in the application of the law; and (3) create a remedy where one already exists.

Unintended Costs and Complications

Under current law, a corporation can only appear in court through an attorney. Oahu Plumbing & Sheet Metal v. Kona Constr., 60 Haw. 372, 374 (1979). If an employer is a corporation, then any filing of a petition and court appearance by the corporation-employer on behalf of an employee would have to be through an attorney. The cost of the attorney may not be recoverable under the Bill even if the corporation-employer prevails.



Existing law would permit the employee-victim to file a petition for an injunction against harassment without hiring an attorney. Many temporary restraining order cases proceed through resolution without the involvement of an attorney.

Uncertainty in the Application of the Law

The Bill creates uncertainty in the application of the law. The Bill states “that an employee organization that represents employees of the employer shall be allowed to intervene in a proceeding under this section.” In a case in which one employee is harassed by another employee, it is unclear if an employee organization would be allowed to intervene on behalf of a respondent-employee or both parties. There is no provision for notice to an employee organization for either petitioner-employee or respondent-employee. The court is required to allow the intervention, but the Bill does not provide guidance on how to resolve a conflict between the right to intervene and a right to a hearing within 15 days. In light of the absence of any service requirement on the employee organization, there is a possibility that the employee organization does not receive notice of the temporary restraining order at the same time as the respondent. Furthermore, if the employer does intervene on behalf of an unwilling employee or invitee and an injunction is granted there is the question whether the unwilling employee or invitee may file a motion to amend the injunction or seek to have the injunction terminated without the participation of the employer.

The Bill has no provision or guidance on what should happen if the employer submits a petition on behalf of the invitee or employee and does not succeed in obtaining an injunction. If the employee seeks their own injunction after the employer’s attempt fails, this places an unfair burden on the respondent, who may incur attorney fees having to defend essentially the same restraining order case multiple times.

A Viable Remedy Presently Exists

This Bill is unnecessary as employers have the ability to prohibit unwanted people from entering their property. Section 708-814 HRS allows an owner or lessee to protect a commercial property from unwanted visitors without application to a court by issuing a reasonable warning. If the individual fails to abide by the trespass warning, that individual will face arrest and criminal prosecution.

Thank you for the opportunity to testify on this measure.