



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

Wednesday, February 1, 2017 2:00 PM

State Capitol, Conference Room 325

by

Judge R. Mark Browning

Senior Family Judge and Deputy Chief Judge

First Circuit

Bill No. and Title: House Bill No. 80, Relating to Annulment, Divorce, and Separation.

Purpose: Imposes a restraining order that preserves the financial assets of the parties and their dependents upon the commencement of annulment, divorce, or separation court action.

Judiciary's Position:

The Judiciary takes no position on this bill and respectfully submits this testimony suggesting two changes to the current bill.

An unfortunate reality of the 21st century is the extensive reliance on credit for both personal and business ordinary expenses. The language in the current bill must allow for this common reliance. We respectfully suggest the following additional language on page two, from line 15, which supports this bill's policy of preserving status quo pending litigation.

(2) Neither party shall incur any further debts, except reasonable amounts necessary for living and business expenses, including the children's educational expenses, and reasonable litigation fees and costs for the pending action, that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

If the above suggested change is incorporated, this would read as follows:



(2) Neither party shall incur any further debts, except reasonable amounts necessary for living and business expenses, including the children's educational expenses, and reasonable litigation fees and costs for the pending action, that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards;

With the implementation of automatic restraining orders, defendants must have an avenue to quickly contest such orders. The existing court rules and practices are sufficient avenues. The proposed language is not necessary to protect the interests of the defendants and may act as a "logjam", affecting the timely treatment of all pre-decree motions. We respectfully suggest the following language at page three from line 16.

(b) After service of the complaint for annulment, divorce, or separation, ~~on two days' notice to the other party or on shorter notice as the court may prescribe, a party may appear, without thereby submitting oneself to the jurisdiction of the court and move to modify or dissolve the restraining order~~ the defendant may file a motion to set aside or modify the restraining order and may choose to file said motion without submitting to the jurisdiction of the court,. The court shall proceed to hear and determine the motion as expeditiously as possible.

If the above suggested change is incorporated, this would read as follows:

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

Thank you for the opportunity to testify on House Bill No. 80.