

1 "Assisted reproduction" means a method of causing pregnancy
2 other than sexual intercourse.

3 "Divorce" includes an annulment, dissolution, and
4 declaration of invalidity of a marriage.

5 "Functioned as a parent of the child" means behaving toward
6 a child in a manner consistent with being the child's parent and
7 performing functions that are customarily performed by a parent,
8 including:

9 (1) Fulfilling parental responsibilities toward the child;

10 (2) Materially participating in the child's upbringing;
11 and

12 (3) Residing with the child in the same household as a
13 regular member of that household.

14 "Genetic father" means the man whose sperm fertilized the
15 egg of a child's genetic mother. If the father-child
16 relationship is established by the presumption of paternity
17 under chapter 584, the term means only the man for whom that
18 relationship is established.

19 "Genetic mother" means the woman whose egg was fertilized
20 by the sperm of a child's genetic father.



1 "Genetic parent" means a child's genetic father or genetic
2 mother.

3 "Incapacity" means the inability of an individual to
4 function as a parent of a child because of the individual's
5 physical or mental condition.

6 "Relative" means a grandparent or a descendant of a
7 grandparent.

8 **§560:2-B Effect of parent-child relationship.** Except as
9 otherwise provided in section 560:2-E(b) through (e), if a
10 parent-child relationship exists or is established under this
11 subpart, the parent is a parent of the child, and the child is a
12 child of the parent, for the purpose of intestate succession.

13 **§560:2-C No distinction based on marital status.** Except
14 as otherwise provided in sections 560:2-114, 560:2-E, 560:2-F,
15 or 560:2-G, a parent-child relationship exists between a child
16 and the child's genetic parents, regardless of the parents'
17 marital status.

18 **§560:2-D Adoptee and adoptee's adoptive parent or parents.**

19 (a) A parent-child relationship exists between an adoptee and
20 the adoptee's adoptive parent or parents.

21 (b) For purposes of subsection (a):



- 1 (1) An individual who is in the process of being adopted
2 by a married couple or reciprocal beneficiaries when
3 one of the spouses or reciprocal beneficiaries dies is
4 treated as adopted by the deceased spouse or
5 reciprocal beneficiary if the adoption is subsequently
6 granted to the decedent's surviving spouse or
7 reciprocal beneficiary; and
- 8 (2) A child of a genetic parent who is in the process of
9 being adopted by a genetic parent's spouse or
10 reciprocal beneficiary when the spouse or reciprocal
11 beneficiary dies is treated as adopted by the deceased
12 spouse or reciprocal beneficiary if the genetic parent
13 survives the deceased spouse or reciprocal beneficiary
14 by one hundred twenty hours.
- 15 (c) If, after a parent-child relationship is established
16 between a child of assisted reproduction and a parent under
17 section 560:2-F, or between a gestational child and a parent
18 under section 560:2-G, the child is in the process of being
19 adopted by the parent's spouse or reciprocal beneficiary when
20 the spouse or reciprocal beneficiary dies, the child is treated



1 as adopted by the deceased spouse or reciprocal beneficiary for
2 the purpose of subsection (b)(2).

3 **§560:2-E Adoptee and adoptee's genetic parents. (a)**

4 Except as otherwise provided in subsections (b) through (e), a
5 parent-child relationship does not exist between an adoptee and
6 the adoptee's genetic parents.

7 (b) A parent-child relationship exists between an
8 individual who is adopted by the spouse or reciprocal
9 beneficiary of either genetic parent and:

10 (1) The genetic parent whose spouse or reciprocal
11 beneficiary adopted the individual; and

12 (2) The other genetic parent, but only for the purpose of
13 the right of the adoptee or a descendant of the
14 adoptee to inherit from or through the other genetic
15 parent.

16 (c) A parent-child relationship exists between both
17 genetic parents and an individual who is adopted by a relative
18 of a genetic parent, or by the spouse or reciprocal beneficiary
19 or surviving spouse or reciprocal beneficiary of a relative of a
20 genetic parent, but only for the purpose of the right of the



1 adoptee or a descendant of the adoptee to inherit from or
2 through either genetic parent.

3 (d) A parent-child relationship exists between both
4 genetic parents and an individual who is adopted after the death
5 of both genetic parents, but only for the purpose of the right
6 of the adoptee or a descendant of the adoptee to inherit through
7 either genetic parent.

8 (e) If, after a parent-child relationship is established
9 between a child of assisted reproduction and a parent or parents
10 under section 560:2-F, or between a gestational child and a
11 parent or parents under section 560:2-G, the child is adopted by
12 another or others, the child's parent or parents under section
13 560:2-F or 560:2-G are treated as the child's genetic parent or
14 parents for the purpose of this section.

15 **§560:2-F Child conceived by assisted reproduction other**
16 **than a child born to gestational carrier.** (a) In this section:

17 "Birth mother" means a woman, other than a gestational
18 carrier under section 560:2-G, who gives birth to a child of
19 assisted reproduction. The term is not limited to a woman who
20 is the child's genetic mother.



1 "Child of assisted reproduction" means a child conceived by
2 means of assisted reproduction by a woman other than a
3 gestational carrier under section 560:2-G.

4 "Third-party donor" means an individual who produces eggs
5 or sperm used for assisted reproduction, whether or not for
6 consideration. The term does not include:

7 (1) A husband who provides sperm, or a wife who provides
8 eggs, that are used for assisted reproduction by the
9 wife;

10 (2) The birth mother of a child of assisted reproduction;
11 or

12 (3) An individual who has been determined under subsection
13 (e) or (f) to have a parent-child relationship with a
14 child of assisted reproduction.

15 (b) A parent-child relationship does not exist between a
16 child of assisted reproduction and a third-party donor.

17 (c) A parent-child relationship exists between a child of
18 assisted reproduction and the child's birth mother.

19 (d) Except as otherwise provided in subsections (i) and
20 (j), a parent-child relationship exists between a child of
21 assisted reproduction and the husband of the child's birth



1 mother if the husband provided the sperm that the birth mother
2 used during his lifetime for assisted reproduction.

3 (e) A birth certificate identifying an individual other
4 than the birth mother as the other parent of a child of assisted
5 reproduction presumptively establishes a parent-child
6 relationship between the child and that individual.

7 (f) Except as otherwise provided in subsections (g), (i),
8 and (j), and unless a parent-child relationship is established
9 under subsection (d) or (e), a parent-child relationship exists
10 between a child of assisted reproduction and an individual other
11 than the birth mother who consented to assisted reproduction by
12 the birth mother with the intent to be treated as the other
13 parent of the child. Consent to assisted reproduction by the
14 birth mother with intent to be treated as the other parent of
15 the child is established if the individual:

16 (1) Signed a record, before or after the child's birth,
17 that, considering all the facts and circumstances,
18 evidences the individual's consent; or

19 (2) In the absence of a signed record under paragraph (1):
20 (A) Functioned as a parent of the child no later than
21 two years after the child's birth;



1 (B) Intended to function as a parent of the child no
2 later than two years after the child's birth but
3 was prevented from carrying out that intent by
4 death, incapacity, or other circumstances; or

5 (C) Intended to be treated as a parent of a
6 posthumously conceived child, if that intent is
7 established by clear and convincing evidence.

8 (g) For the purpose of subsection (f)(1), neither an
9 individual who signed a record more than two years after the
10 birth of the child, nor a relative of that individual who is not
11 also a relative of the birth mother, inherits from or through
12 the child unless the individual functioned as a parent of the
13 child before the child reached eighteen years of age.

14 (h) For the purpose of subsection (f)(2):

15 (1) If the birth mother is married and no divorce
16 proceeding is pending, or in a reciprocal beneficiary
17 relationship, in the absence of clear and convincing
18 evidence to the contrary, her spouse or reciprocal
19 beneficiary satisfies subsection (f)(2)(A) or (B); and

20 (2) If the birth mother is a surviving spouse and at her
21 deceased spouse's death no divorce proceeding was



1 pending, or is the surviving reciprocal beneficiary,
2 in the absence of clear and convincing evidence to the
3 contrary, her deceased spouse or reciprocal
4 beneficiary satisfies subsection (f)(2)(B) or (C).

5 (i) If a married couple is divorced before placement of
6 eggs, sperm, or embryos, a child resulting from the assisted
7 reproduction is not a child of the birth mother's former spouse,
8 unless the former spouse consented in a record that, if assisted
9 reproduction were to occur after divorce, the child would be
10 treated as the former spouse's child.

11 (j) If, in a record, an individual withdraws consent to
12 assisted reproduction before placement of eggs, sperm, or
13 embryos, a child resulting from the assisted reproduction is not
14 a child of that individual, unless the individual subsequently
15 satisfies subsection (f).

16 (k) If, under this section, an individual is a parent of a
17 child of assisted reproduction who is conceived after the
18 individual's death, the child is treated as in gestation at the
19 individual's death for purposes of section 560:2-104(b)(2) if
20 the child is:



1 (1) In utero not later than thirty-six months after the
2 individual's death; or

3 (2) Born not later than forty-five months after the
4 individual's death.

5 **§560:2-G Child born to gestational carrier.** (a) In this
6 section:

7 "Gestational agreement" means an enforceable or
8 unenforceable agreement for assisted reproduction in which a
9 woman agrees to carry a child to birth for an intended parent,
10 intended parents, or an individual described in subsection (e).

11 "Gestational carrier" means a woman who is not an intended
12 parent who gives birth to a child under a gestational agreement.
13 The term is not limited to a woman who is the child's genetic
14 mother.

15 "Gestational child" means a child born to a gestational
16 carrier under a gestational agreement.

17 "Intended parent" means an individual who entered into a
18 gestational agreement providing that the individual will be the
19 parent of a child born to a gestational carrier by means of
20 assisted reproduction. The term is not limited to an individual
21 who has a genetic relationship with the child.



1 (b) A parent-child relationship is conclusively
2 established by a court order designating the parent or parents
3 of a gestational child.

4 (c) A parent-child relationship between a gestational
5 child and the gestational child's carrier does not exist unless
6 the gestational carrier is:

7 (1) Designated as a parent of the child in a court order,
8 as described in subsection (b); or

9 (2) The child's genetic mother and a parent-child
10 relationship does not exist under this section with an
11 individual other than the gestational carrier.

12 (d) In the absence of a court order under subsection (b),
13 a parent-child relationship exists between a gestational child
14 and an intended parent who:

15 (1) Functioned as a parent of the child no later than two
16 years after the child's birth; or

17 (2) Died while the gestational carrier was pregnant if:

18 (A) There were two intended parents, and the other
19 intended parent functioned as a parent of the
20 child no later than two years after the child's
21 birth;



1 (B) There were two intended parents, the other
2 intended parent also died while the gestational
3 carrier was pregnant, and a relative of either
4 deceased intended parent or the spouse,
5 reciprocal beneficiary, or surviving spouse or
6 reciprocal beneficiary of a relative of either
7 deceased parent functioned as a parent of the
8 child no later than two years after the child's
9 birth; or

10 (C) There was no other intended parent and a relative
11 of the deceased parent, or the spouse, reciprocal
12 beneficiary, or surviving spouse or reciprocal
13 beneficiary of a relative of the deceased
14 intended parent, functioned as a parent of the
15 child no later than two years after the child's
16 birth.

17 (e) In the absence of a court order under subsection (b),
18 a parent-child relationship exists between a gestational child
19 and an individual whose sperm or eggs were used after the
20 individual's death or incapacity to conceive a child under a
21 gestational agreement entered into after the individual's death



1 or incapacity if the individual intended to be treated as the
2 parent of the child. The individual's intent may be shown by:

3 (1) A record signed by the individual that, considering
4 all the facts and circumstances, evidences the
5 individual's intent; or

6 (2) Other facts and circumstances establishing the
7 individual's intent by clear and convincing evidence.

8 (f) Except as otherwise provided in subsection (g), and
9 unless there is clear and convincing evidence of a contrary
10 intent, an individual is deemed to have intended to be treated
11 as the parent of a gestational child for purposes of subsection
12 (e) (2) if:

13 (1) The individual, before death or incapacity, deposited
14 the sperm or eggs that were used to conceive the
15 child;

16 (2) When the individual deposited the sperm or eggs, the
17 individual was married, and no divorce proceeding was
18 pending; and

19 (3) The individual's spouse or reciprocal beneficiary, or
20 surviving spouse or reciprocal beneficiary, functioned



1 as a parent of the child no later than two years after
2 the child's birth.

3 (g) The presumption under subsection (f) does not apply if
4 there is:

5 (1) A court order under subsection (b); or

6 (2) A signed record that satisfies subsection (e)(1).

7 (h) If, under this section, an individual is a parent of a
8 gestational child who is conceived after the individual's death,
9 the child is treated as in gestation at the individual's death
10 for purposes of section 560:2-104(b)(2) if the child is:

11 (1) In utero not later than thirty-six months after the
12 individual's death; or

13 (2) Born not later than forty-five months after the
14 individual's death.

15 (i) This section does not affect other laws of this State
16 governing the enforceability or validity of a gestational
17 agreement.

18 **§560:2-H Equitable adoption.** This subpart does not affect
19 the doctrine of equitable adoption."



1 PART II

2 SECTION 3. Chapter 560, Hawaii Revised Statutes, is
3 amended by designating sections 560:2-101 to 560:2-114 under
4 article II, part 1, as subpart A and inserting a title before
5 section 560:2-101 to read as follows:

6 "A. GENERAL PROVISIONS"

7 PART III

8 SECTION 4. Chapter 560, Hawaii Revised Statutes, is
9 amended by adding two new sections to article II, part 8, to be
10 appropriately designated and to read as follows:

11 "§560:2- Reformation to correct mistakes. The court
12 may reform the terms of a governing instrument, even if
13 unambiguous, to conform the terms to the transferor's intention
14 if it is proved by clear and convincing evidence what the
15 transferor's intention was and that the terms of the governing
16 instrument were affected by a mistake of fact or law, whether in
17 expression or inducement.

18 §560:2- Modification to achieve transferor's tax
19 objectives. To achieve the transferor's tax objectives, the
20 court may modify the terms of a governing instrument in a manner
21 that is not contrary to the transferor's probable intention.



1 The court may provide that the modification has retroactive
2 effect."

3 SECTION 5. Chapter 560, Hawaii Revised Statutes, is
4 amended by adding a new part to article III to be appropriately
5 designated and to read as follows:

6 "PART . UNIFORM ESTATE TAX APPORTIONMENT ACT

7 §560:3-A Short title. This part may be cited as the
8 Uniform Estate Tax Apportionment Act.

9 §560:3-B Definitions. In this part:

10 "Apportionable estate" means the value of the gross estate
11 as finally determined for purposes of the estate tax to be
12 apportioned, reduced by:

13 (1) Any claim or expense allowable as a deduction for
14 purposes of the tax;

15 (2) The value of any interest in property that, for
16 purposes of the tax, qualifies for a marital or
17 charitable deduction or is otherwise deductible or
18 exempt; and

19 (3) Any amount added to the decedent's gross estate
20 because of a gift tax on transfers made before death.



1 "Estate tax" means a federal, state, or foreign tax imposed
2 because of the death of an individual and any interest and
3 penalties associated with the tax. The term does not include an
4 inheritance tax, income tax, or generation-skipping transfer tax
5 incurred on a direct skip taking effect at death.

6 "Gross estate" means, with respect to an estate tax, all
7 interests in property subject to the tax.

8 "Person" means an individual, corporation, business trust,
9 estate, trust, partnership, limited liability company,
10 association, joint venture, public corporation, government,
11 governmental subdivision, agency, or instrumentality, or any
12 other legal or commercial entity.

13 "Ratable" or "ratably" means apportioned or allocated pro
14 rata, according to the relative values of interests to which the
15 term is applied.

16 "Time-limited interest" means an interest in property that
17 terminates on a lapse of time or on the occurrence or
18 nonoccurrence of an event or that is subject to the exercise of
19 discretion that could transfer a beneficial interest to another
20 person. The term does not include a cotenancy unless the
21 cotenancy itself is a time-limited interest.



1 "Value" means, with respect to an interest in property,
2 fair market value as finally determined for purposes of the
3 estate tax that is to be apportioned, reduced by any outstanding
4 debt secured by the interest without reduction for taxes paid or
5 required to be paid or for any special valuation adjustment.

6 **§560:3-C Apportionment by will or other dispositive**
7 **instrument.** (a) Except as otherwise provided in subsection
8 (c), the following rules apply:

- 9 (1) To the extent that a provision of a decedent's will
10 expressly and unambiguously directs the apportionment
11 of an estate tax, the tax shall be apportioned
12 accordingly;
- 13 (2) Any portion of an estate tax not apportioned pursuant
14 to paragraph (1) shall be apportioned in accordance
15 with any revocable trust of which the decedent was the
16 settlor that expressly and unambiguously directs the
17 apportionment of an estate tax. If conflicting
18 apportionment provisions appear in two or more
19 revocable trust instruments, the provisions in the
20 most recently dated instrument shall prevail. For
21 purposes of this paragraph:



1 (A) A trust is revocable if it was revocable
2 immediately after the trust instrument was
3 executed, even if the trust subsequently becomes
4 irrevocable; and

5 (B) The date of an amendment to a revocable trust
6 instrument is the date of the amendment
7 instrument only if the amendment contains an
8 apportionment provision; and

9 (3) If any portion of an estate tax is not apportioned
10 pursuant to paragraph (1) or (2) and a provision in
11 any other dispositive instrument expressly and
12 unambiguously directs that any interest in the
13 property disposed of by the instrument is, or is not,
14 to be applied to the payment of the estate tax
15 attributable to the interest disposed of by the
16 instrument, the provision controls the apportionment
17 of the tax to that interest.

18 (b) Subject to subsection (c), and unless the decedent
19 expressly and unambiguously directs the contrary, the following
20 rules apply:



1 (1) If an apportionment provision directs that a person
2 receiving an interest in property under an instrument
3 is to be exonerated from the responsibility to pay an
4 estate tax that would otherwise be apportioned to the
5 interest:

6 (A) The tax attributable to the exonerated interest
7 shall be apportioned among the other persons
8 receiving interests passing under the instrument;
9 or

10 (B) If the values of the other interests are less
11 than the tax attributable to the exonerated
12 interest, the deficiency shall be apportioned
13 ratably among the other persons receiving
14 interests in the apportionable estate that are
15 not exonerated from apportionment of the tax;

16 (2) If an apportionment provision directs that an estate
17 tax is to be apportioned to an interest in property, a
18 portion of which qualifies for a marital or charitable
19 deduction, the estate tax shall first be apportioned
20 ratably among the holders of the portion that does not
21 qualify for a marital or charitable deduction and then



1 apportioned ratably among the holders of the
2 deductible portion to the extent that the value of the
3 nondeductible portion is insufficient;

4 (3) Except as otherwise provided in paragraph (4), if any
5 apportionment provision directs that an estate tax be
6 apportioned to property in which one or more
7 time-limited interests exist, other than interests in
8 a specified property under section 560:3-G, the tax
9 shall be apportioned to the principal of the property,
10 regardless of the deductibility of some of the
11 interests in that property; and

12 (4) If an apportionment provision directs that an estate
13 tax is to be apportioned to the holders of interests
14 in property in which one or more time-limited
15 interests exist, and a charity has an interest that
16 otherwise qualifies for an estate tax charitable
17 deduction, the tax shall first be apportioned, to the
18 extent feasible, to interests in property that have
19 not been distributed to the persons entitled to
20 receive the interests.



1 (c) A provision that apportions an estate tax is
2 ineffective to the extent that it increases the tax apportioned
3 to a person having an interest in the gross estate over which
4 the decedent had no power to transfer immediately before the
5 decedent executed the instrument in which the apportionment
6 direction was made. For purposes of this subsection, a
7 testamentary power of appointment is a power to transfer the
8 property that is subject to the power.

9 **§560:3-D Statutory appointment of estate taxes.** To the
10 extent that apportionment of an estate tax is not controlled by
11 an instrument described in section 560:3-C, and except as
12 otherwise provided in sections 560:3-F and 560:3-G, the
13 following rules apply:

- 14 (1) Subject to paragraphs (2), (3), and (4), the estate
15 tax is apportioned ratably to each person that has an
16 interest in the apportionable estate;
- 17 (2) A generation-skipping transfer tax incurred on a
18 direct skip taking effect at death is charged to the
19 person to which the interest in property is
20 transferred;



1 (3) If property is included in the decedent's gross estate
2 because of section 2044 of the Internal Revenue Code
3 of 1986 or any similar estate tax provision, the
4 difference between the total estate tax for which the
5 decedent's estate is liable and the amount of estate
6 tax for which the decedent's estate would have been
7 liable if the property had not been included in the
8 decedent's gross estate is apportioned ratably among
9 the holders of interest in the property. The balance
10 of the tax, if any, is apportioned ratably to each
11 other person having an interest in the apportionable
12 estate; and

13 (4) Except as otherwise provided in section 560:3-C(b)(4)
14 and except as to property to which section 560:3-G
15 applies, an estate tax apportioned to persons holding
16 interests in property subject to a time-limited
17 interest shall be apportioned, without further
18 apportionment, to the principal of that property.

19 **§560:3-E Credits and referrals.** Except as otherwise
20 provided in sections 560:3-F and 560:3G, the following rules
21 apply to credits and deferrals of estate taxes:



- 1 (1) A credit resulting from the payment of gift taxes, or
2 from estate taxes paid on property previously taxed,
3 inures ratably to the benefit of all persons to which
4 the estate tax is apportioned;
- 5 (2) A credit for state or foreign estate taxes inures
6 ratably to the benefit of all persons to which the
7 estate tax is apportioned, except that the amount of a
8 credit for a state or foreign tax paid by a
9 beneficiary of the property on which the state or
10 foreign tax was imposed, directly or by a charge
11 against the property, inures to the benefit of the
12 beneficiary; and
- 13 (3) If payment of a portion of an estate tax is deferred
14 because of the inclusion in the gross estate of a
15 particular interest in property, the benefit of the
16 deferral inures ratably to the persons to which the
17 estate tax attributable to the interest is
18 apportioned. The burden of any interest charges
19 incurred on a deferral of taxes and the benefit of any
20 tax deduction associated with the accrual or payment



1 of the interest charge is allocated ratably among the
2 persons receiving an interest in the property.

3 **§560:3-F Insulated property; advancement of tax.** (a) In
4 this section:

5 "Advanced fraction" means a fraction that has as its
6 numerator the amount of the advanced tax and as its denominator
7 the value of the interests in insulated property to which that
8 tax is attributable.

9 "Advanced tax" means the aggregate amount of estate tax
10 attributable to interests in insulated property that is required
11 to be advanced by uninsulated holders under subsection (c).

12 "Insulated property" means property subject to a
13 time-limited interest that is included in the apportionable
14 estate but is unavailable for payment of an estate tax because
15 of impossibility or impracticability.

16 "Uninsulated holder" means a person who has an interest in
17 uninsulated property.

18 "Uninsulated property" means property included in the
19 apportionable estate other than insulated property.

20 (b) If an estate tax is to be advanced pursuant to
21 subsection (c) by persons holding interests in uninsulated



1 property subject to a time-limited interest other than property
2 to which section 560:3-G applies, the tax shall be advanced,
3 without further apportionment, from the principal of the
4 uninsured property.

5 (c) Subject to section 560:3-I(b) and (d), an estate tax
6 attributable to interests in insulated property shall be
7 advanced ratably by uninsured holders. If the value of an
8 interest in uninsured property is less than the amount of
9 estate taxes otherwise required to be advanced by the holder of
10 that interest, the deficiency shall be advanced ratably by the
11 persons holding interests in properties that are excluded from
12 the apportionable estate under paragraph (2) of the definition
13 of "apportionable estate" in section 560:3-B as if those
14 interests were in uninsured property.

15 (d) A court having jurisdiction to determine the
16 apportionment of an estate tax may require a beneficiary of an
17 interest in insulated property to pay all or part of the estate
18 tax otherwise apportioned to the interest if the court finds
19 that it would be substantially more equitable for that
20 beneficiary to bear the tax liability personally than for that
21 part of the tax to be advanced by uninsured holders.



1 (e) When a distribution of insulated property is made,
2 each uninsulated holder may recover from the distributee a
3 ratable portion of the advanced fraction of the property
4 distributed. To the extent that undistributed insulated
5 property ceases to be insulated, each uninsulated holder may
6 recover from the property a ratable portion of the advanced
7 fraction of the total undistributed property.

8 (f) Upon a distribution of insulated property for which,
9 pursuant to subsection (d), the distributee becomes obligated to
10 make a payment to uninsulated holders, a court may award an
11 uninsulated holder a recordable lien on the distributee's
12 property to secure the distributee's obligation to that
13 uninsulated holder.

14 **§560:3-G Apportionment and recapture of special elective**
15 **benefits.** (a) In this section:

16 "Special elective benefit" means a reduction in an estate
17 tax obtained by an election for:

18 (1) A reduced valuation of specified property that is
19 included in the gross estate;



1 (2) A deduction from the gross estate, other than a
2 marital or charitable deduction, allowed for specified
3 property; or

4 (3) An exclusion from the gross estate of specified
5 property.

6 "Specified property" means property for which an election
7 has been made for a special elective benefit.

8 (b) If an election is made for one or more special
9 elective benefits, an initial apportionment of a hypothetical
10 estate tax shall be computed as if no election for any of those
11 benefits had been made. The aggregate reduction in estate tax
12 resulting from all elections made shall be allocated among
13 holders of interests in the specified property in the proportion
14 that the amount of deduction, reduced valuation, or exclusion
15 attributable to each holder's interest bears to the aggregate
16 amount of deductions, reduced valuations, and exclusions
17 obtained by the decedent's estate from the elections. If the
18 estate tax initially apportioned to the holder of an interest in
19 specified property is reduced to zero, any excess amount of
20 reduction reduces ratably the estate tax apportioned to other
21 persons that receive interests in the apportionable estate.



1 (c) An additional estate tax imposed to recapture all or
2 part of a special elective benefit shall be charged to the
3 persons that are liable for the additional tax under the law
4 providing for the recapture.

5 **§560:3-H Securing payment of estate tax from property in**
6 **possession of fiduciary.** (a) A fiduciary may defer a
7 distribution of property until the fiduciary is satisfied that
8 adequate provision for payment of the estate tax has been made.

9 (b) A fiduciary may withhold from a distributee an amount
10 equal to the amount of estate tax apportioned to an interest of
11 the distributee.

12 (c) As a condition to a distribution, a fiduciary may
13 require the distributee to provide a bond or other security for
14 the portion of the estate tax apportioned to the distributee.

15 **§560:3-I Collection of estate tax by fiduciary.** (a) A
16 fiduciary responsible for payment of an estate tax may collect
17 from any person the tax apportioned to and the tax required to
18 be advanced by the person.

19 (b) Except as otherwise provided in section 560:3-F, any
20 estate tax due from a person that cannot be collected from the



1 person may be collected by the fiduciary from other persons in
2 the following order of priority:

3 (1) Any person having an interest in the apportionable
4 estate which is not exonerated from the tax;

5 (2) Any other person having an interest in the
6 apportionable estate; and

7 (3) Any person having an interest in the gross estate.

8 (c) A domiciliary fiduciary may recover from an ancillary
9 personal representative the estate tax apportioned to the
10 property controlled by the ancillary personal representative.

11 (d) The total tax collected from a person pursuant to this
12 part may not exceed the value of the person's interest.

13 **§560:3-J Right of reimbursement.** (a) A person required
14 under section 560:3-I to pay an estate tax greater than the
15 amount due from the person under section 560:3-C or 560:3-D has
16 a right to reimbursement from another person to the extent that
17 the other person has not paid the tax required by section
18 560:3-C or 560:3-D and a right to reimbursement ratably from
19 other persons to the extent that each has not contributed a
20 portion of the amount collected under section 560:3-I(b).



1 (b) A fiduciary may enforce the right of reimbursement
2 under subsection (a) on behalf of the person that is entitled to
3 the reimbursement and shall take reasonable steps to do so if
4 requested by the person.

5 **§560:3-K Action to determine or enforce part.** A
6 fiduciary, transferee, or beneficiary of the gross estate may
7 maintain an action for declaratory judgment to have a court
8 determine and enforce this part.

9 **§560:3-L Reserved.**

10 **§560:3-M Reserved.**

11 **§560:3-N Delayed application.** (a) Sections 560:3-C to
12 560:3-G do not apply to the estate of a decedent who dies on or
13 within three years after the effective date of this part, nor to
14 the estate of a decedent who dies more than three years after
15 the effective date of this part if the decedent continuously
16 lacked testamentary capacity from the expiration of the
17 three-year period until the date of death.

18 (b) For the estate of a decedent who dies on or after the
19 effective date of this part to which sections 560:3-C to 560:3-G
20 do not apply, estate taxes shall be apportioned pursuant to the



1 law in effect immediately before the effective date of this
2 part.

3 PART IV

4 SECTION 6. Section 560:1-201, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By adding two new definitions to be appropriately
7 inserted and to read:

8 "Record" means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is
10 retrievable in perceivable form.

11 "Sign" means, with present intent to authenticate or adopt
12 a record other than a will:

13 (1) To execute or adopt a tangible symbol; or

14 (2) To attach to or logically associate with the record an
15 electronic symbol, sound, or process."

16 2. By amending the definitions of "beneficiary" and
17 "issue" to read:

18 "Beneficiary", as it relates to a trust beneficiary,
19 includes a person who has any present or future interest, vested
20 or contingent, and also includes the owner of an interest by
21 assignment or other transfer; as it relates to a charitable



1 trust, includes any person entitled to enforce the trust; as it
2 relates to a "beneficiary of a beneficiary designation", refers
3 to a beneficiary of an insurance or annuity policy, of an
4 account with POD designation, of a security registered in
5 beneficiary form (TOD), of a transfer on death deed, or of a
6 pension, profit-sharing, retirement, or similar benefit plan, or
7 other nonprobate transfer at death; and, as it relates to a
8 "beneficiary designated in a governing instrument", includes a
9 grantee of a deed, a devisee, a trust beneficiary, a beneficiary
10 of a beneficiary designation, a donee, appointee, or taker in
11 default of a power of appointment, or a person in whose favor a
12 power of attorney or a power held in any individual, fiduciary,
13 or representative capacity is exercised.

14 "Issue" of [~~a person~~] an individual means descendant as
15 defined in this section."

16 SECTION 7. Section 560:1-401, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) If notice of a hearing on any petition is required
19 and except for specific notice requirements as otherwise
20 provided, the petitioner shall cause notice of the time and
21 place of hearing of any petition to be given to any interested



1 person or the person's attorney if the person has appeared by
2 attorney or requested that notice be sent to the person's
3 attorney, or, in the case of a minor or an incapacitated person,
4 the minor's or incapacitated person's parent or guardian, as
5 appropriate. Notice shall be given:

6 (1) By mailing a copy thereof at least fourteen days
7 before the time set for the hearing by certified,
8 registered, or ordinary first class mail addressed to
9 the person being notified at the post office address
10 given in the person's demand for notice, if any, or at
11 the person's office or place of residence, if known;

12 (2) By delivering a copy thereof to the person being
13 notified personally at least fourteen days before the
14 time set for the hearing; or

15 (3) If the address or identity of any person is not known
16 and cannot be ascertained with reasonable diligence,
17 by publishing at least once a week for [~~three~~] two
18 consecutive weeks, a copy thereof in a newspaper
19 having general circulation in the judicial circuit
20 where the hearing is to be held, the last publication



1 of which is to be at least ten days before the time
2 set for the hearing."

3 SECTION 8. Section 560:1-403, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§560:1-403 Pleadings; when parties bound by others;**

6 **notice.** In formal proceedings involving trusts or estates of
7 decedents, minors, protected persons, or incapacitated persons,
8 and in judicially supervised settlements, the following rules
9 apply:

10 (1) Interests to be affected shall be described in
11 pleadings [~~which~~] that give reasonable information to
12 owners by name or class, by reference to the
13 instrument creating the interests, or in [~~other~~]
14 another appropriate manner;

15 (2) [~~Persons are~~] A person is bound by [~~orders~~] an order
16 binding [~~others~~] another in the following cases:

17 (A) Orders binding the sole holder or all co-holders
18 of a power of revocation or a presently
19 exercisable general power of appointment,
20 including one in the form of a power of
21 amendment, bind other persons to the extent their



1 interests (as objects, takers in default, or
2 otherwise) are subject to the power;

3 (B) To the extent there is no conflict of interest
4 between them or among persons represented[~~7~~
5 ~~orders~~]:

6 (i) An order binding a conservator [~~bind~~] binds
7 the person whose estate the conservator
8 controls; [~~orders~~]

9 (ii) An order binding a guardian [~~bind~~] binds the
10 ward if no conservator of the ward's estate
11 has been appointed; [~~orders~~]

12 (iii) An order binding a trustee [~~bind~~] binds
13 beneficiaries of the trust in proceedings to
14 probate a will establishing or adding to a
15 trust, to review the acts or accounts of a
16 [~~prior~~] former fiduciary, and in proceedings
17 involving creditors or other third parties;
18 [~~and orders~~]

19 (iv) An order binding a personal representative
20 [~~bind~~] binds persons interested in the
21 undistributed assets of a decedent's estate



1 in actions or proceedings by or against the
 2 estate[. ~~If there is no conflict of~~
 3 ~~interest and no conservator or guardian has~~
 4 ~~been appointed, a parent may represent the~~
 5 ~~parent's minor child]; and~~

6 (v) An order binding a sole holder or all
 7 co-holders of a general testamentary power
 8 of appointment binds other persons to the
 9 extent their interests as objects, takers in
 10 default, or otherwise are subject to the
 11 power; and

12 (C) [An] Unless otherwise represented, a minor or an
 13 incapacitated, unborn, or unascertained person
 14 [who is not otherwise represented] is bound by an
 15 order to the extent the person's interest is
 16 adequately represented by another party having a
 17 substantially identical interest in the
 18 proceeding;

19 (3) If no conservator or guardian has been appointed, a
 20 parent may represent a minor child;

21 ~~[-3-]~~ (4) Notice is required as follows:



1 (A) [~~Notice~~] The notice as prescribed by section
2 560:1-401 shall be given to every interested
3 person or to one who can bind an interested
4 person as described in paragraph (2) (A) or
5 (2) (B). Notice may be given both to a person and
6 to another who may bind the person; and
7 (B) Notice is given to unborn or unascertained
8 persons[~~7~~] who are not represented under
9 paragraph (2) (A) or (2) (B) [~~7~~] by giving notice to
10 all known persons whose interests in the
11 proceedings are substantially identical to those
12 of the unborn or unascertained persons; and
13 [~~(4)~~] (5) At any point in a proceeding, a court may appoint
14 a guardian ad litem to represent the interest of a
15 minor, an incapacitated, unborn, or unascertained
16 person, or a person whose identity or address is
17 unknown, if the court determines that representation
18 of the interest otherwise would be inadequate. If not
19 precluded by conflict of interests, a guardian ad
20 litem may be appointed to represent several persons or
21 interests. The court shall set out its reasons for



1 appointing a guardian ad litem as a part of the record
2 of the proceeding."

3 SECTION 9. Section 560:2-102, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§560:2-102 Share of spouse or reciprocal beneficiary.**

6 The intestate share of a decedent's surviving spouse or
7 reciprocal beneficiary is:

8 (1) The entire intestate estate if:

9 (A) No descendant or parent of the decedent survives
10 the decedent; or

11 (B) All of the decedent's surviving descendants are
12 also descendants of the surviving spouse or
13 reciprocal beneficiary and there is no other
14 descendant of the surviving spouse or reciprocal
15 beneficiary who survives the decedent;

16 (2) The first [~~\$200,000,~~] \$400,000, plus three-fourths of
17 any balance of the intestate estate, if no descendant
18 of the decedent survives the decedent, but a parent of
19 the decedent survives the decedent;

20 (3) The first [~~\$150,000,~~] \$330,000, plus one-half of any
21 balance of the intestate estate, if all of the



1 decedent's surviving descendants are also descendants
 2 of the surviving spouse or reciprocal beneficiary and
 3 the surviving spouse or reciprocal beneficiary has one
 4 or more surviving descendants who are not descendants
 5 of the decedent; or

6 (4) The first [~~\$100,000,~~] \$220,000, plus one-half of any
 7 balance of the intestate estate, if one or more of the
 8 decedent's surviving descendants are not descendants
 9 of the surviving spouse or reciprocal beneficiary."

10 SECTION 10. Section 560:2-103, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§560:2-103 Share of heirs other than surviving spouse or**
 13 **reciprocal beneficiary.** (a) Definitions. In this section:

14 "Deceased parent", "deceased grandparent", "deceased
 15 spouse", or "deceased reciprocal beneficiary" means a parent,
 16 grandparent, spouse, or reciprocal beneficiary, as applicable,
 17 who either predeceased the decedent or is deemed under this
 18 article to have predeceased the decedent.

19 "Surviving parent", "surviving grandparent", "surviving
 20 spouse", "surviving reciprocal beneficiary", or "surviving
 21 descendant" means a parent, grandparent, spouse, reciprocal



1 beneficiary, or descendant who neither predeceased the decedent
2 nor is deemed under this article to have predeceased the
3 decedent.

4 (b) Heirs other than surviving spouse or reciprocal
5 beneficiary. Any part of the intestate estate not passing to
6 the decedent's surviving spouse or reciprocal beneficiary under
7 section 560:2-102[, ~~or the entire intestate estate if there is~~
8 ~~no surviving spouse or reciprocal beneficiary, passes in the~~
9 ~~following order to the individuals designated below who survive~~
10 ~~the decedent:~~

- 11 ~~(1) To the decedent's descendants by representation;~~
12 ~~(2) If there is no surviving descendant, to the decedent's~~
13 ~~parents equally if both survive, or to the surviving~~
14 ~~parent; provided, however, if the decedent is a minor,~~
15 ~~and if it is shown by clear and convincing evidence~~
16 ~~that any parent has:~~
- 17 ~~(A) Deserted the child without affording means of~~
18 ~~identification for a period of at least ninety~~
19 ~~days;~~



1 ~~(B) Failed to communicate with the child when able to~~
2 ~~do so for a period of at least one year when the~~
3 ~~child is in the custody of another; or~~
4 ~~(C) Failed to provide for care and support of the~~
5 ~~child when able to do so for a period of at least~~
6 ~~one year when the child is in the custody of~~
7 ~~another despite a child support order requiring~~
8 ~~such support;~~
9 ~~such parent shall be deemed to have predeceased the~~
10 ~~decedent;~~
11 ~~(3) If there is no surviving descendant or parent entitled~~
12 ~~to inherit, to the descendants of the decedent's~~
13 ~~parents or either of them by representation; and~~
14 ~~(4) If there is no surviving descendant, parent entitled~~
15 ~~to take, or descendant of a parent, but the decedent~~
16 ~~is survived by one or more grandparents or descendants~~
17 ~~of grandparents, half of the estate passes to the~~
18 ~~decedent's paternal grandparents equally if both~~
19 ~~survive, or to the surviving paternal grandparent, or~~
20 ~~to the descendants of the decedent's paternal~~
21 ~~grandparents or either of them if both are deceased,~~



1 ~~the descendants taking by representation; and the~~
2 ~~other half passes to the decedent's maternal relatives~~
3 ~~in the same manner; but if there is no surviving~~
4 ~~grandparent or descendant of a grandparent on either~~
5 ~~the paternal or the maternal side, the entire estate~~
6 ~~passes to the decedent's relatives on the other side~~
7 ~~in the same manner as the half.]~~

8 passes to the decedent's descendants or parents as provided in
9 subsections (c) and (d). If there is no surviving spouse or
10 reciprocal beneficiary, the entire interest estate passes to the
11 decedent's descendants, parents, or other heirs as provided in
12 subsections (c) through (j).

13 (c) Surviving descendant. If a decedent is survived by
14 one or more descendants, any part of the intestate estate not
15 passed to the surviving spouse or reciprocal beneficiary passes
16 by representation to the decedent's surviving descendants.

17 (d) Surviving parent. If a decedent is not survived by a
18 decedent but is survived by one or more parents, any part of the
19 intestate share not passing to the surviving spouse or
20 reciprocal beneficiary is distributed as follows:



- 1 (1) The intestate estate or part thereof is divided into
2 as many equal shares as there are:
- 3 (A) Surviving parents; and
4 (B) Deceased parents with one or more surviving
5 descendants, if any, as determined under
6 subsection (e);
- 7 (2) One share passes to each surviving parent; provided
8 that if the decedent is a minor, and if it is shown by
9 clear and convincing evidence that any parent has:
- 10 (A) Deserted the child without affording means of
11 identification for a period of at least ninety
12 days;
- 13 (B) Failed to communicate with the child when able to
14 do so for a period of at least one year when the
15 child is in the custody of another; or
- 16 (C) Failed to provide for care and support of the
17 child when able to do so for a period of at least
18 one year when the child is in the custody of
19 another, despite an order requiring child
20 support;



1 The parent shall be deemed to have predeceased the
2 decedent; and

3 (3) The balance of the intestate estate or part thereof,
4 if any, passes by representation to the surviving
5 descendants of the decedent's deceased parents, as
6 determined under subsection (e).

7 (e) When a parent survives: computation of shares of
8 surviving descendants of deceased parent. The following rules
9 apply under subsection (d) to determine whether a deceased
10 parent of the decedent is treated as having a surviving
11 descendant:

12 (1) If all the surviving descendants of one or more
13 deceased parents are also descendants of one or more
14 surviving parents, those descendants are deemed to
15 have predeceased the decedent; and

16 (2) If two or more deceased parents have the same
17 surviving descendants and none of those deceased
18 parents has any other surviving descendants, those
19 deceased parents are deemed to be one deceased parent
20 with surviving descendants.



1 (f) Surviving descendant of deceased parent. If a
2 decendent is not survived by a descendant or parent but is
3 survived by one or more descendants of a parent, the intestate
4 estate passes by representation to the surviving descendants of
5 the decedent's deceased parents.

6 (g) Surviving grandparents. If a decedent is not survived
7 by a descendant, parent, or descendant of a parent but is
8 survived by one or more grandparents, the intestate estate is
9 distributed as follows:

10 (1) The intestate estate is divided into as many equal
11 shares as there are:

12 (A) Surviving grandparents; and

13 (B) Deceased grandparents with one or more surviving
14 descendants, if any, as determined under
15 subsection (h);

16 (2) One share passes to each surviving grandparent; and

17 (3) The balance of the intestate estate, if any, passes by
18 representation to the surviving descendants of the
19 decedent's deceased grandparents, as determined under
20 subsection (h).



1 (h) When a grandparent survives: computation of shares of
2 surviving descendants of deceased grandparent. The following
3 rules apply under subsection (g) to determine whether a deceased
4 grandparent of the decedent is treated as having a surviving
5 descendant:

6 (1) If all of the surviving descendants of one or more
7 deceased grandparents are also descendants of one or
8 more surviving grandparents, those descendants are
9 deemed to have predeceased the decedent; and

10 (2) If two or more deceased grandparents have the same
11 surviving descendants and none of those deceased
12 grandparents has any other surviving descendant, those
13 deceased grandparents are deemed to be one deceased
14 grandparent with surviving descendants.

15 (i) Surviving descendant of deceased grandparent. If a
16 decedent is not survived by a descendant, parent, descendant of
17 a parent, or grandparent but is survived by one or more
18 descendants of a grandparent, the intestate share passes by
19 representation to the surviving descendants of the decedent's
20 deceased grandparents.



1 (j) Surviving descendants of deceased spouse or reciprocal
 2 beneficiary. If a decedent is not survived by a descendant,
 3 parent, descendant of a parent, grandparent, or descendant of a
 4 grandparent but is survived by one or more deceased spouses or
 5 reciprocal beneficiaries, the intestate estate passes by
 6 representation to the surviving descendants of the deceased
 7 spouse or spouses, or reciprocal beneficiary or reciprocal
 8 beneficiaries."

9 SECTION 11. Section 560:2-104, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "**§560:2-104 Requirement [that heir survive decedent for]**
 12 **of survival by one hundred twenty hours[+]; gestational period;**
 13 **pregnancy after decedent's death.** (a) In this section:

14 "Assisted reproduction" means a method of causing pregnancy
 15 other than sexual intercourse.

16 "Gestational period" means the time between the start of a
 17 pregnancy and birth.

18 (b) For purposes of intestate succession, homestead
 19 allowance, and exempt property, and except as otherwise provided
 20 in subsection (c), the following rules apply:



- 1 (1) An individual born before a decedent's death who fails
2 to survive the decedent by one hundred twenty hours is
3 deemed to have predeceased the decedent [~~for purposes~~
4 ~~of homestead allowance, exempt property, and intestate~~
5 ~~succession, and the decedent's heirs are determined~~
6 ~~accordingly~~]. If it is not established by clear and
7 convincing evidence that an individual [~~who would~~
8 ~~otherwise be an heir~~] born before a decedent's death
9 survived the decedent by one hundred twenty hours, it
10 is deemed that the individual failed to survive for
11 the required period[-];
- 12 (2) An individual in gestation at the decedent's death is
13 deemed to be living at the decedent's death if the
14 individual lives one hundred twenty hours after birth.
15 If it is not established by clear and convincing
16 evidence that an individual in gestation at the
17 decedent's death lived one hundred twenty hours after
18 birth, it is deemed that the individual failed to
19 survive for the required period; and
- 20 (3) If the decedent dies before the start of a pregnancy
21 by assisted reproduction resulting in the birth of an



1 individual who lives at least one hundred twenty hours
 2 after birth, that individual is deemed to be living at
 3 the decedent's death if the decedent's personal
 4 representative, not later than six months after the
 5 decedent's death, received notice or had actual
 6 knowledge of an intent to use genetic material in the
 7 assisted reproduction and:

8 (A) The embryo was in utero not later than thirty-six
 9 months after the decedent's death; or

10 (B) The individual was born not later than forty-five
 11 months after the decedent's death.

12 (c) This section [is] shall not [to be applied] apply if
 13 its application would [result in a taking of intestate] cause
 14 the estate [by] to pass to the State under section 560:2-105."

15 SECTION 12. Section 560:2-106, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "**§560:2-106 Representation.** (a) Definitions. In this
 18 section:

19 "Deceased descendant", "deceased parent", [ø] "deceased
 20 grandparent", "deceased spouse", or "deceased reciprocal
 21 beneficiary" means a descendant, parent, [ø] grandparent,



1 spouse, or reciprocal beneficiary who either predeceased the
2 decedent or is deemed to have predeceased the decedent under
3 section 560:2-104.

4 "Surviving descendant" means a descendant who neither
5 predeceased the decedent nor is deemed to have predeceased the
6 decedent under section 560:2-104.

7 (b) Decedent's descendants. If, under section [~~560:2-~~
8 ~~103(1)-7~~] 560:2-103(c), all or part of a decedent's intestate
9 estate [~~or a part thereof~~] passes "by representation" to the
10 decedent's descendants, the estate or part thereof is divided
11 into as many equal shares as there are:

12 (1) Surviving descendants in the generation nearest to the
13 decedent [~~which~~] that contains one or more surviving
14 descendants; and

15 (2) Deceased descendants in the same generation who left
16 surviving descendants, if any.

17 Each surviving descendant in the nearest generation is allocated
18 one share. The remaining shares, if any, are combined and then
19 divided in the same manner among the surviving descendants of
20 the deceased descendants as if the surviving descendants who



1 were allocated a share and their surviving descendants had
2 predeceased the decedent.

3 ~~[(c) Descendants of parents or grandparents. If, under~~
4 ~~section 560:2-103(3) or (4), a decedent's intestate estate or a~~
5 ~~part thereof passes "by representation" to the descendants of~~
6 ~~the decedent's deceased parents or either of them or to the~~
7 ~~descendants of the decedent's deceased paternal or maternal~~
8 ~~grandparents or either of them, the estate or part thereof is~~
9 ~~divided into as many equal shares as there are:~~

10 ~~(1) Surviving descendants in the generation nearest the~~
11 ~~deceased parents or either of them, or the deceased~~
12 ~~grandparents or either of them, that contains one or~~
13 ~~more surviving descendants; and~~

14 ~~(2) Deceased descendants in the same generation who left~~
15 ~~surviving descendants, if any.~~

16 ~~Each surviving descendant in the nearest generation is allocated~~
17 ~~one share. The remaining shares, if any, are combined and then~~
18 ~~divided in the same manner among the surviving descendants of~~
19 ~~the deceased descendants as if the surviving descendants who~~
20 ~~were allocated a share and their surviving descendants had~~
21 ~~predeceased the decedent.]~~



1 (c) Descendants of parent when parent survives. If a
2 decedent is survived by one or more parents and, under section
3 560:2-103(d) and (e), the balance of the decedent's intestate
4 estate or part thereof passes by representation to the surviving
5 descendants of one or more of the decedent's deceased parents,
6 the balance passes to those descendants as if they were the
7 decedent's surviving descendants under subsection (b).

8 (d) Descendants of parent when no parent survives. If a
9 decedent is not survived by a parent and, under section
10 560:2-103(f), the decedent's intestate estate passes by
11 representation to the surviving descendants of one or more of
12 the decedent's deceased parents, the intestate estate passes to
13 those descendants as if they were the decedent's surviving
14 descendants under subsection (b).

15 (e) Descendants of grandparent when grandparent survives.
16 If a decedent is survived by one or more grandparents and, under
17 section 560:2-103(g) and (h), the balance of the decedent's
18 intestate estate passes by representation to the surviving
19 descendants of one or more of the decedent's deceased
20 grandparents, the balance passes to those descendants as if they
21 were the decedent's surviving descendants under subsection (b).



1 (f) Descendants of grandparent when no grandparent
 2 survives. If a decedent is not survived by a grandparent and,
 3 under section 560:2-103(i), the decedent's intestate estate
 4 passes by representation to the surviving descendants of one or
 5 more of the decedent's deceased grandparents, the intestate
 6 estate passes to those descendants as if they were the
 7 decedent's surviving descendants under subsection (b).

8 (g) Descendants of deceased spouse or reciprocal
 9 beneficiary. If a decedent is survived by descendants of one or
 10 more deceased spouses or reciprocal beneficiaries and, under
 11 section 560:2-103(j), the decedent's intestate estate passes by
 12 representation to the surviving descendants of one or more of
 13 the decedent's deceased spouses or reciprocal beneficiaries, the
 14 intestate estate passes to those descendants as if they were the
 15 decedent's surviving descendants under subsection (b)."

16 SECTION 13. Section 560:2-107, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "**§560:2-107** ~~[Kindred of half blood.]~~ **Inheritance without**
 19 **regard to number of common ancestors in the same generation.**

20 ~~[Relatives of the half blood inherit the same share they would~~
 21 ~~inherit if they were of the whole blood.]~~ **An heir inherits**



1 without regard to how many common ancestors in the same
2 generation the heir shares with the decedent."

3 SECTION 14. Section 560:2-108, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§560:2-108** ~~[Afterborn heirs. An individual in gestation~~
6 ~~at a particular time is treated as living at that time if the~~
7 ~~individual lives one hundred twenty hours or more after birth.]~~
8 **Reserved.**"

9 SECTION 15. Section 560:2-113, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§560:2-113** **Individuals related to decedent through** ~~[two~~
12 ~~lines.]~~ **more than one line.** An individual who is related to the
13 decedent through ~~[two lines]~~ more than one line of relationship
14 is entitled to only a single share based on ~~[the]~~ one line of
15 relationship ~~[that would entitle the individual to the larger~~
16 ~~share].~~ If the shares from the lines of relationship are
17 unequal, the individual is entitled to the largest share. The
18 individual and the individual's descendants are deemed to have
19 predeceased the decedent with respect to the other line or lines
20 of relationship."



1 SECTION 16. Section 560:2-114, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§560:2-114 Parent [~~and child relationship.~~ (a) Except**
4 ~~as provided in subsections (b) and (c), for purposes of~~
5 ~~intestate succession by, through, or from a person, an~~
6 ~~individual is the child of the child's natural parents,~~
7 ~~regardless of their marital status. The parent and child~~
8 ~~relationship may be established under chapter 584.~~

9 ~~(b) An adopted individual is the child of the child's~~
10 ~~adopting parent or parents and not of the child's natural~~
11 ~~parents, except that:~~

12 ~~(1) Adoption of a child by the spouse or reciprocal~~
13 ~~beneficiary of either natural parent has no effect on:~~

14 ~~(A) The relationship between the child and that~~
15 ~~natural parent; or~~

16 ~~(B) The right of the child or a descendant of the~~
17 ~~child to inherit from or through the other~~
18 ~~natural parent; and~~

19 ~~(2) Adoption of a child during such child's minority by~~
20 ~~the spouse or reciprocal beneficiary of a natural~~
21 ~~parent of the child, by a natural grandparent, aunt,~~



1 ~~uncle, or sibling of the child or the spouse or~~
2 ~~reciprocal beneficiary of a natural grandparent, aunt,~~
3 ~~uncle, or sibling of the child has no effect on the~~
4 ~~relationship between the child and either natural~~
5 ~~parent, for the limited purpose of interpretation or~~
6 ~~construction of a disposition in any will, trust, or~~
7 ~~other lifetime instrument, whether executed before or~~
8 ~~after the order of adoption, and for the purposes of~~
9 ~~determining the heirs at law of a natural family~~
10 ~~member of the child.~~

11 ~~(c) Inheritance from or through a child by either natural~~
12 ~~parent or the parent's kindred is precluded unless that natural~~
13 ~~parent has openly treated the child as the natural parent's, and~~
14 ~~has not refused to support the child.~~

15 ~~(d) For the purposes of this section, if a person has been~~
16 ~~adopted more than once, the term "natural parent" includes an~~
17 ~~adopting parent by an earlier adoption.] **barred from inheriting**~~
18 ~~**in certain circumstances.**~~

19 (a) A parent is barred from inheriting from or through a
20 child of the parent if:



1 (1) The parent's parental rights were terminated and the
2 parent-child relationship was not judicially
3 reestablished; or

4 (2) The child died before reaching eighteen years of age
5 and there is clear and convincing evidence that
6 immediately before the child's death, the parental
7 rights of the parent could have been terminated under
8 the laws of this State, other than this chapter, on
9 the basis of nonsupport, abandonment, abuse, neglect,
10 or other actions or inactions of the parent toward the
11 child.

12 (b) For the purpose of intestate succession from or
13 through the deceased child, a parent who is barred from
14 inheriting under this section is treated as if the parent
15 predeceased the child.

16 (c) Except as otherwise provided in section 560:2-E(b),
17 the termination of a parent's parental rights to a child has no
18 effect on the right of the child or a descendant of the child to
19 inherit from or through the parent."

20 SECTION 17. Section 560:2-202, Hawaii Revised Statutes, is
21 amended by amending subsections (a) and (b) to read as follows:



1 " (a) Elective-share amount. The surviving spouse or
 2 reciprocal beneficiary of a decedent who dies domiciled in this
 3 State has a right of election, under the limitations and
 4 conditions stated in this part, to take an elective-share amount
 5 equal to [~~the value of the elective share percentage~~] fifty per
 6 cent of the value of the marital-property portion of the
 7 augmented estate[, ~~determined by the length of time the spouse~~
 8 ~~and the decedent were married to each other, or the reciprocal~~
 9 ~~beneficiary and the decedent were in a reciprocal beneficiary~~
 10 ~~relationship, in accordance with the following schedule.~~

11

12 ~~If the decedent and the~~
 13 ~~spouse were married to~~
 14 ~~each other, or the~~
 15 ~~decedent and the reciprocal~~
 16 ~~beneficiary were in a~~
 17 ~~relationship.~~

~~The elective share~~
~~percentage is:~~

18

19	Less than 1 year	Supplemental amount only.
20	1 year but less than 2 years	3% of the augmented estate.
21	2 years but less than 3 years	6% of the augmented estate.



1	3 years but less than 4 years	9% of the augmented estate.
2	4 years but less than 5 years	12% of the augmented estate.
3	5 years but less than 6 years	15% of the augmented estate.
4	6 years but less than 7 years	18% of the augmented estate.
5	7 years but less than 8 years	21% of the augmented estate.
6	8 years but less than 9 years	24% of the augmented estate.
7	9 years but less than 10 years	27% of the augmented estate.
8	10 years but less than 11 years	30% of the augmented estate.
9	11 years but less than 12 years	34% of the augmented estate.
10	12 years but less than 13 years	38% of the augmented estate.
11	13 years but less than 14 years	42% of the augmented estate.
12	14 years but less than 15 years	46% of the augmented estate.
13	15 years or more	50% of the augmented estate;
14	provided, however, the surviving spouse or reciprocal	
15	beneficiary may elect to take a share smaller than that to which	
16	the surviving spouse or reciprocal beneficiary is entitled	
17	hereunder].	

18 (b) Supplemental elective-share amount. If the sum of the
19 amounts described in sections 560:2-207, 560:2-209(a)(1), and
20 that part of the elective-share amount payable from the
21 decedent's net probate estate and nonprobate transfers to others



1 under section [~~560:2-209(b) and (e)~~] 560:2-209(c) and (d) is
 2 less than [~~\$50,000,~~] \$90,000, the surviving spouse or reciprocal
 3 beneficiary is entitled to a supplemental elective-share amount
 4 equal to [~~\$50,000~~] \$90,000 minus the sum of the amounts
 5 described in those sections. The supplemental elective-share
 6 amount is payable from the decedent's net probate estate and
 7 from recipients of the decedent's nonprobate transfers to others
 8 in the order of priority set forth in section [~~560:2-209(b) and~~
 9 ~~(e)~~] 560:2-209(c) and (d)."

10 SECTION 18. Section 560:2-203, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§560:2-203 Composition of the augmented estate.** (a)
 13 Subject to section 560:2-208, the value of the augmented estate,
 14 to the extent provided in sections 560:2-204, 560:2-205,
 15 560:2-206, and 560:2-207, consists of the sum of the values of
 16 all property, whether real or personal[~~+~~], movable or immovable,
 17 tangible or intangible, wherever situated, that constitute the
 18 [~~decedent's~~]:

- 19 (1) Decedent's net probate estate[~~, the decedent's~~];
 20 (2) Decedent's nonprobate transfers to others[~~, the~~
 21 ~~decedent's~~];



1 (3) Decedent's nonprobate transfers to the surviving
 2 spouse or reciprocal beneficiary [~~and the surviving~~];
 3 and

4 (4) Surviving spouse's property or reciprocal
 5 beneficiary's property and nonprobate transfers to
 6 others.

7 (b) The value of the marital-property portion of the
 8 augmented estate consists of the sum of the values of the four
 9 components of the augmented estate as determined under
 10 subsection (a) multiplied by the following percentage:

11	<u>Less than 1 year.....</u>	<u>3%</u>
12	<u>1 year but less than 2 years.....</u>	<u>6%</u>
13	<u>2 years but less than 3 years.....</u>	<u>12%</u>
14	<u>3 years but less than 4 years.....</u>	<u>18%</u>
15	<u>4 years but less than 5 years.....</u>	<u>24%</u>
16	<u>5 years but less than 6 years.....</u>	<u>30%</u>
17	<u>6 years but less than 7 years.....</u>	<u>36%</u>
18	<u>7 years but less than 8 years.....</u>	<u>42%</u>
19	<u>8 years but less than 9 years.....</u>	<u>54%</u>
20	<u>9 years but less than 10 years.....</u>	<u>60%</u>
21	<u>10 years but less than 11 years.....</u>	<u>68%</u>



1	<u>11 years but less than 12 years.....</u>	76%
2	<u>12 years but less than 13 years.....</u>	84%
3	<u>13 years but less than 14 years.....</u>	92%
4	<u>14 years but less than 15 years.....</u>	96%
5	<u>15 years or more.....</u>	100%."

6 SECTION 19. Section 560:2-205, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§560:2-205 Decedent's nonprobate transfers to others.**

9 The value of the augmented estate includes the value of the
10 decedent's nonprobate transfers to others, not included under
11 section 560:2-204, of any of the following types, in the amount
12 provided respectively for each type of transfer:

13 (1) Property owned or owned in substance by the decedent
14 immediately before death that passed outside probate
15 at the decedent's death. Probate included under this
16 category consists of:

17 (A) Property over which the decedent alone,
18 immediately before death, held a presently
19 exercisable general power of appointment. The
20 amount included is the value of the property
21 subject to the power, to the extent the property



1 passed at the decedent's death, by exercise,
2 release, lapse, in default, or otherwise, to or
3 for the benefit of any person other than the
4 decedent's estate or surviving spouse or
5 reciprocal beneficiary;

6 (B) The decedent's fractional interest in property
7 held by the decedent in joint tenancy with the
8 right of survivorship. The amount included is
9 the value of the decedent's fractional interest,
10 to the extent the fractional interest passed by
11 right of survivorship at the decedent's death to
12 a surviving joint tenant other than the
13 decedent's surviving spouse or reciprocal
14 beneficiary;

15 (C) The decedent's ownership interest in property or
16 accounts held in POD, TOD, or co-ownership
17 registration with the right of survivorship. The
18 amount included is the value of the decedent's
19 ownership interest, to the extent the decedent's
20 ownership interest passed at the decedent's death
21 to or for the benefit of any person other than



1 the decedent's estate or surviving spouse or
2 reciprocal beneficiary. As used herein,
3 "ownership interest" is determined by dividing
4 (i) the sum of all the decedent's deposits to the
5 account, including deposit life insurance
6 proceeds added to the account on account of the
7 decedent's death, less all withdrawals made by or
8 for the benefit of the decedent, by (ii) the sum
9 of all deposits to the account; and
10 (D) Proceeds of insurance, including accidental death
11 benefits, on the life of the decedent, if the
12 decedent owned the insurance policy immediately
13 before death or if and to the extent the decedent
14 alone and immediately before death held a
15 presently exercisable general power of
16 appointment over the policy or its proceeds. The
17 amount included is the value of the proceeds, to
18 the extent they were payable at the decedent's
19 death to or for the benefit of any person other
20 than the decedent's estate or surviving spouse or
21 reciprocal beneficiary;



1 (2) Property transferred in any of the following forms by
2 the decedent during marriage:

3 (A) Any irrevocable transfer in which the decedent
4 retained the right to the possession or enjoyment
5 of, or to the income from, the property if and to
6 the extent the decedent's right terminated at or
7 continued beyond the decedent's death. The
8 amount included is the value of the fraction of
9 the property to which the decedent's right
10 related, to the extent the fraction of the
11 property passed outside probate to or for the
12 benefit of any person other than the decedent's
13 estate or surviving spouse or reciprocal
14 beneficiary; or

15 (B) Any transfer in which the decedent created a
16 power over income or property, exercisable by the
17 decedent alone or in conjunction with any other
18 person, or exercisable by a nonadverse party, to
19 or for the benefit of the decedent, creditors of
20 the decedent, the decedent's estate, or creditors
21 of the decedent's estate. The amount included

1 with respect to a power over property is the
2 value of the property subject to the power, and
3 the amount included with respect to a power over
4 income is the value of the property that produces
5 or produced the income, to the extent the power
6 in either case was exercisable at the decedent's
7 death to or for the benefit of any person other
8 than the decedent's surviving spouse or
9 reciprocal beneficiary or to the extent the
10 property passed at the decedent's death, by
11 exercise, release, lapse, in default, or
12 otherwise, to or for the benefit of any person
13 other than the decedent's estate or surviving
14 spouse or reciprocal beneficiary. If the power
15 is a power over both income and property and the
16 preceding sentence produces different amounts,
17 the amount included is the greater amount;

- 18 (3) Property that passed during marriage and during the
19 two-year period next preceding the decedent's death as
20 a result of a transfer by the decedent if the transfer
21 was of any of the following types:



1 (A) Any property that passed as a result of the
2 termination of a right or interest in, or power
3 over, property that would have been included in
4 the augmented estate under paragraph (1)(A), (B),
5 or (C), or under paragraph (2), if the right,
6 interest, or power had not terminated until the
7 decedent's death. The amount included is the
8 value of the property that would have been
9 included under those paragraphs if the property
10 were valued at the time the right, interest, or
11 power terminated, and is included only to the
12 extent the property passed upon termination to or
13 for the benefit of any person other than the
14 decedent or the decedent's estate, spouse or
15 reciprocal beneficiary, or surviving spouse or
16 reciprocal beneficiary. As used in this
17 subparagraph, "termination", with respect to a
18 right or interest in property, occurs when the
19 right or interest terminated by the terms of the
20 governing instrument or the decedent transferred
21 or relinquished the right or interest, and, with



1 respect to a power over property, occurs when the
2 power terminated by exercise, release, lapse,
3 default, or otherwise, but, with respect to a
4 power described in paragraph (1)(A),

5 "termination" occurs when the power terminated by
6 exercise or release, but not otherwise;

7 (B) Any transfer of or relating to an insurance
8 policy on the life of the decedent if the
9 proceeds would have been included in the
10 augmented estate under paragraph (1)(D) had the
11 transfer not occurred. The amount included is
12 the value of the insurance proceeds to the extent
13 the proceeds were payable at the decedent's death
14 to or for the benefit of any person other than
15 the decedent's estate or surviving spouse or
16 reciprocal beneficiary; or

17 (C) Any transfer of property, to the extent not
18 otherwise included in the augmented estate, made
19 to or for the benefit of a person other than the
20 decedent's surviving spouse or reciprocal
21 beneficiary. The amount included is the value of



1 the transferred property to the extent the
 2 aggregate transfers to any one donee in either of
 3 the two years exceeded [~~\$20,000.~~] \$32,000."

4 SECTION 20. Section 560:2-209, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 "**§560:2-209 Sources from which elective share payable.**

7 (a) Elective-share amount only. In a proceeding for an
 8 elective share, the following are applied first to satisfy the
 9 elective-share amount and to reduce or eliminate any
 10 contributions due from the decedent's probate estate and
 11 recipients of the decedent's nonprobate transfers to others:

12 (1) Amounts included in the augmented estate under section
 13 560:2-204 [~~which~~] that pass or have passed to the
 14 surviving spouse or reciprocal beneficiary by testate
 15 or intestate succession and amounts included in the
 16 augmented estate under section 560:2-206; and

17 (2) [~~Amounts~~] The marital-property portion of amounts
 18 included in the augmented estate under section
 19 560:2-207 [~~up to the applicable percentage thereof.~~
 20 ~~For the purposes of this subsection, the "applicable~~
 21 ~~percentage" is twice the elective share percentage set~~



1 ~~forth in the schedule in section 560:2-202(a)~~

2 ~~appropriate to the length of time:~~

3 ~~(A) The spouse and the decedent were married to each~~
4 ~~other; or~~

5 ~~(B) The reciprocal beneficiary and the decedent were~~
6 ~~in a reciprocal beneficiary relationship].~~

7 (b) The marital-property portion under subsection (a) (2)
8 is computed by multiplying the value of the amounts included in
9 the augmented estate under section 560:2-207 by the percentage
10 of the augmented estate set forth in the schedule in section
11 560:2-203(b), appropriate to the length of the marriage or the
12 reciprocal beneficiary relationship.

13 ~~[(b)]~~ (c) If, after the application of subsection (a), the
14 elective-share amount is not fully satisfied or the surviving
15 spouse or reciprocal beneficiary is entitled to a supplemental
16 elective-share amount, amounts included in the decedent's
17 probate estate, other than assets passing to the surviving
18 spouse or reciprocal beneficiary by testate or intestate
19 succession, and in the decedent's nonprobate transfers to
20 others[, other than amounts included] under section
21 [560:2-205(3)(A) or (C),] 560:2-205(1), (2), and (3)(B), are



1 applied first to satisfy the unsatisfied balance of the
2 elective-share amount or the supplemental elective-share amount.
3 The decedent's probate estate and that portion of the decedent's
4 nonprobate transfers to others are so applied that liability for
5 the unsatisfied balance of the elective-share amount or for the
6 supplemental elective-share amount is equitably apportioned
7 among the recipients of the decedent's probate estate and of
8 that portion of the decedent's nonprobate transfers to others in
9 proportion to the value of their interests therein.

10 ~~[(e)]~~ (d) If, after the application of subsections (a) and
11 ~~[(b)],~~ (c), the elective-share or supplemental elective-share
12 amount is not fully satisfied, the remaining portion of the
13 decedent's nonprobate transfers to others is so applied that
14 liability for the unsatisfied balance of the elective-share or
15 supplemental elective-share amount is equitably apportioned
16 among the recipients of the remaining portion of the decedent's
17 nonprobate transfers to others in proportion to the value of
18 their interests therein.

19 (e) The unsatisfied balance of the elective-share or
20 supplemental elective-share amount as determined under



1 subsection (c) or (d) is treated as a general pecuniary devise
2 for purposes of section 560:3-904."

3 SECTION 21. Section 560:2-212, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Incapacitated surviving spouse or reciprocal
6 beneficiary. If the election is exercised on behalf of a
7 surviving spouse or reciprocal beneficiary who is an
8 incapacitated person, that portion of the elective-share and
9 supplemental elective-share amounts due from the decedent's
10 probate estate and recipients of the decedent's nonprobate
11 transfers to others under section [~~560:2-209(b) and (c) must~~]
12 560:2-209(c) and (d) shall be placed in a custodial trust for
13 the benefit of the surviving spouse or reciprocal beneficiary
14 under chapter 554B, except as modified below. For the purposes
15 of this subsection, an election on behalf of a surviving spouse
16 or reciprocal beneficiary by an agent under a durable power of
17 attorney is presumed to be on behalf of a surviving spouse or
18 reciprocal beneficiary who is an incapacitated person. For
19 purposes of the custodial trust established by this subsection:

20 (1) The electing guardian, conservator, or agent is the
21 custodial trustee;



1 (2) The surviving spouse or reciprocal beneficiary is the
2 beneficiary; and

3 (3) The custodial trust is deemed to have been created by
4 the decedent spouse or reciprocal beneficiary by
5 written transfer that takes effect at the decedent
6 spouse's or reciprocal beneficiary's death and that
7 directs the custodial trustee to administer the
8 custodial trust as one created for the benefit of an
9 incapacitated beneficiary."

10 SECTION 22. Section 560:2-302, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Except as provided in subsection (b), if a testator
13 fails to provide in the testator's will for any of the
14 testator's children born or adopted after the execution of the
15 will, the omitted after-born or after-adopted child receives a
16 share in the estate as follows:

17 (1) If the testator had no child living when the testator
18 executed the will, an omitted after-born or after-
19 adopted child receives a share in the estate equal in
20 value to that which the child would have received had
21 the testator died intestate, unless the will devised



1 all or substantially all of the estate to [~~the other~~]
2 another parent of the omitted child and that [~~other~~]
3 parent survives the testator and is entitled to take
4 under the will;

5 (2) If the testator had one or more children living when
6 the testator executed the will, and the will devised
7 property or an interest in property to one or more of
8 the then-living children, an omitted after-born or
9 after-adopted child is entitled to share in the
10 testator's estate as follows:

11 (A) The portion of the testator's estate in which the
12 omitted after-born or after-adopted child is
13 entitled to share is limited to devises made to
14 the testator's then-living children under the
15 will;

16 (B) The omitted after-born or after-adopted child is
17 entitled to receive the share of the testator's
18 estate, as limited in subparagraph (A), that the
19 child would have received had the testator
20 included all omitted after-born and after-adopted
21 children with the children to whom devises were



1 made under the will and had given an equal share
2 of the estate to each child;

3 (C) To the extent feasible, the interest granted an
4 omitted after-born or after-adopted child under
5 this section [~~must~~] shall be of the same
6 character, whether equitable or legal, present or
7 future, as that devised to the testator's then-
8 living children under the will;

9 (D) In satisfying a share provided by this paragraph,
10 devises to the testator's children who were
11 living when the will was executed abate ratably.
12 In abating the devises of the then-living
13 children, the court shall preserve to the maximum
14 extent possible the character of the testamentary
15 plan adopted by the testator."

16 SECTION 23. Section 560:2-402, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§560:2-402 Homestead allowance.** A decedent's surviving
19 spouse or reciprocal beneficiary is entitled to a homestead
20 allowance of [~~\$15,000.~~] \$30,000. If there is no surviving
21 spouse or reciprocal beneficiary, each minor child and each



1 dependent child of the decedent is entitled to a homestead
2 allowance amounting to [~~\$15,000~~] \$30,000 divided by the number
3 of minor and dependent children of the decedent. The homestead
4 allowance is exempt from and has priority over all claims
5 against the estate. Homestead allowance is in addition to any
6 share passing to the surviving spouse or reciprocal beneficiary
7 or minor or dependent child by the will of the decedent, unless
8 otherwise provided, by intestate succession, or by way of
9 elective share."

10 SECTION 24. Section 560:2-403, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§560:2-403 Exempt property.** In addition to the homestead
13 allowance, the decedent's surviving spouse or reciprocal
14 beneficiary is entitled from the estate to a value, not
15 exceeding [~~\$10,000~~] \$20,000 in excess of any security interests
16 therein, in household furniture, automobiles, furnishings,
17 appliances, and personal effects. If there is no surviving
18 spouse or reciprocal beneficiary, the decedent's children are
19 entitled jointly to the same value. If encumbered chattels are
20 selected and the value in excess of security interests, plus
21 that of other exempt property, is less than [~~\$10,000~~] \$20,000 or



1 if there is not [~~\$10,000~~] \$20,000 worth of exempt property in
2 the estate, the spouse, reciprocal beneficiary, or children are
3 entitled to other assets of the estate, if any, to the extent
4 necessary to make up the [~~\$10,000~~] \$20,000 value. Rights to
5 exempt property and assets needed to make up a deficiency of
6 exempt property have priority over all claims against the
7 estate, but the right to any assets to make up a deficiency of
8 exempt property abates as necessary to permit earlier payment of
9 homestead allowance and family allowance. These rights are in
10 addition to any benefit or share passing to the surviving
11 spouse, reciprocal beneficiary, or children by the decedent's
12 will, unless otherwise provided, by intestate succession, or by
13 way of elective share."

14 SECTION 25. Section 560:2-405, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) If the estate is otherwise sufficient, property
17 specifically devised may not be used to satisfy rights to
18 homestead allowance or exempt property. Subject to this
19 restriction, the surviving spouse or reciprocal beneficiary,
20 guardians of minor children, or children who are adults may
21 select property of the estate as homestead allowance and exempt



1 property. The personal representative may make those selections
2 if the surviving spouse or reciprocal beneficiary, the children,
3 or the guardians of the minor children are unable or fail to do
4 so within a reasonable time or there is no guardian of a minor
5 child. The personal representative may execute an instrument or
6 deed of distribution to establish the ownership of property
7 taken as homestead allowance or exempt property. The personal
8 representative may determine the family allowance in a lump sum
9 not exceeding [~~\$18,000~~] \$36,000 or periodic installments not
10 exceeding [~~\$1,500~~] \$3,000 per month for one year, and may
11 disburse funds of the estate in payment of the family allowance
12 and any part of the homestead allowance payable in cash. The
13 personal representative or an interested person aggrieved by any
14 selection, determination, payment, proposed payment, or failure
15 to act under this section may petition the court for appropriate
16 relief, which may include a family allowance other than that
17 which the personal representative determined or could have
18 determined."

19 SECTION 26. Section 560:2-514, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§560:2-514 **Contracts concerning succession.** A contract
2 to make a will or devise, or not to revoke a will or devise, or
3 to die intestate, if executed after January 1, 1997, may be
4 established only by:

- 5 (1) Provisions of a will stating material provisions of
6 the contract;
- 7 (2) An express reference in a will to a contract and
8 extrinsic evidence proving the terms of the contract;
9 or
- 10 (3) A writing [~~signed by the decedent~~] evidencing the
11 contract[-] and signed by the party alleged to have
12 breached the contract.

13 The execution of a joint will or mutual wills does not
14 create a presumption of a contract not to revoke the will or
15 wills."

16 SECTION 27. Section 560:2-603, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Substitute gift. If a devisee fails to survive the
19 testator and is a grandparent, a descendant of a grandparent, or
20 a stepchild of either the testator or the donor of a power of



1 appointment exercised by the testator's will, the following
2 apply:

- 3 (1) Except as provided in paragraph (4), if the devise is
4 not in the form of a class gift and the deceased
5 devisee leaves surviving descendants, a substitute
6 gift is created in the devisee's surviving
7 descendants. They take by representation the property
8 to which the devisee would have been entitled had the
9 devisee survived the testator;
- 10 (2) Except as provided in paragraph (4), if the devise is
11 in the form of a class gift, other than a devise to
12 "issue", "descendants", "heirs of the body", "heirs",
13 "next of kin", "relatives", or "family", or a class
14 described by language of similar import, a substitute
15 gift is created in the surviving descendants of any
16 deceased devisee. The property to which the devisees
17 would have been entitled had all of them survived the
18 testator passes to the surviving devisees and the
19 surviving descendants of the deceased devisees. Each
20 surviving devisee takes the share to which [~~he or she~~]
21 the surviving devisee would have been entitled had the



1 deceased devisees survived the testator. Each
2 deceased devisee's surviving descendants who are
3 substituted for the deceased devisee take by
4 representation the share to which the deceased devisee
5 would have been entitled had the deceased devisee
6 survived the testator. For the purposes of this
7 paragraph, "deceased devisee" means a class member who
8 failed to survive the testator and left one or more
9 surviving descendants;

10 (3) For the purposes of section 560:2-601, words of
11 survivorship, such as in a devise to an individual "if
12 he survives me", or in a devise to "my surviving
13 children", are not, in the absence of additional
14 evidence, a sufficient indication of an intent
15 contrary to the application of this section;

16 (4) If the will creates an alternative devise with respect
17 to a devise for which a substitute gift is created by
18 paragraph (1) or (2), the substitute gift is
19 superseded by the alternative devise only if [an]:



1 (A) The alternative devise is in the form of a class
2 gift and one or more members of the class is
3 entitled to take under the will; or

4 (B) The alternate devise is not in the form of a
5 class gift and the expressly designated devisee
6 of the alternative devise is entitled to take
7 under the will;

8 (5) Unless the language creating a power of appointment
9 expressly excludes the substitution of the descendants
10 of an appointee for the appointee, a surviving
11 descendant of a deceased appointee of a power of
12 appointment can be substituted for the appointee under
13 this section, whether or not the descendant is an
14 object of the power[-]; and

15 (6) In this subsection:
16 "Descendant of a grandparent" means an individual who
17 qualifies as a descendent of a grandparent of the
18 testator or of the donor of a power of appointment
19 under the:

20 (A) Rules of construction applicable to a class gift;
21 or



1 (B) Rules for intestate succession if the devise of
 2 exercise of the power is not in the form of a
 3 class gift.

4 "Surviving descendants of a deceased devisee" means
 5 the descendants of a deceased devisee or class member
 6 who would take under a class gift created in the
 7 testator's will."

8 SECTION 28. Section 560:2-606, Hawaii Revised Statutes, is
 9 amended by amending subsection (a) to read as follows:

10 "(a) A specific devisee has a right to the specifically
 11 devised property in the testator's estate at death and:

12 (1) Any balance of the purchase price, together with any
 13 security agreement, owing from a purchaser to the
 14 testator at death by reason of sale of the property;

15 (2) Any amount of a condemnation award for the taking of
 16 the property unpaid at death;

17 (3) Any proceeds unpaid at death on fire or casualty
 18 insurance on or other recovery for injury to the
 19 property; [and]

20 (4) Property owned by the testator at death and acquired
 21 as a result of foreclosure, or obtained in lieu of



- 1 foreclosure, of the security interest for a
2 specifically devised obligation[-];
- 3 (5) Any real property or tangible personal property owned
4 by the testator at death that the testator acquired as
5 a replacement for specifically devised real property
6 or tangible personal property; and
- 7 (6) If not covered by paragraphs (1) through (5), a
8 pecuniary devise equal to the value as of its date of
9 disposition of other specifically devised property
10 disposed of during the testator's lifetime but only to
11 the extent it is established that ademption would be
12 inconsistent with the testator's manifested plan of
13 distribution or that at the time the will was made,
14 the date of disposition or otherwise, the testator did
15 not intend ademption of the devise."

16 SECTION 29. Section 560:2-608, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§560:2-608 Exercise of power of appointment.** In the
19 absence of a requirement that a power of appointment be
20 exercised by a reference, or by an express or specific
21 reference, to the power, a general residuary clause in a will,



1 or a will making general disposition of all of the testator's
2 property, expresses an intention to exercise a power of
3 appointment held by the testator only if:

4 (1) The power is a general power exercisable in favor of
5 the powerholder's estate, and the creating instrument
6 does not contain [a] an effective gift if the power is
7 not exercised; or

8 (2) The testator's will manifests an intention to include
9 the property subject to the power."

10 SECTION 30. Section 560:2-704, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§560:2-704 Power of appointment; meaning of specific**
13 **reference requirement.** [~~¶~~] A powerholder's substantial
14 compliance with a formal requirement of appointment imposed in a
15 governing instrument [~~creating a power of appointment expressly~~
16 ~~requires that the power be exercised]~~ by [a] the donor,
17 including a requirement that the instrument exercising the power
18 of appointment make reference[~~, an express reference,~~] or [a]
19 specific reference[~~,~~] to the power [~~or its source, it is~~
20 ~~presumed that the donor's intention, in requiring that the donee~~
21 ~~exercise the power by making reference to the particular power~~



1 ~~or to the creating instrument, was to prevent an inadvertent~~
2 ~~exercise of the power.]~~ is sufficient if:

3 (1) The powerholder knows of and intends to exercise the
4 power; and

5 (2) The powerholder's manner of attempted exercise does
6 not impair a material purpose of the donor in imposing
7 the requirement."

8 SECTION 31. Section 560:2-706, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) Substitute gift. If a beneficiary fails to survive
11 the decedent and is a grandparent, a descendant of a
12 grandparent, or a stepchild of the decedent, the following
13 apply:

14 (1) Except as provided in paragraph (4), if the
15 beneficiary designation is not in the form of a class
16 gift and the deceased beneficiary leaves surviving
17 descendants, a substitute gift is created in the
18 beneficiary's surviving descendants. They take by
19 representation the property to which the beneficiary
20 would have been entitled had the beneficiary survived
21 the decedent;



1 (2) Except as provided in paragraph (4), if the
2 beneficiary designation is in the form of a class
3 gift, other than a beneficiary designation to "issue",
4 "descendants", "heirs of the body", "heirs", "next of
5 kin", "relatives", or "family", or a class described
6 by language of similar import, a substitute gift is
7 created in the surviving descendants of any deceased
8 beneficiary. The property to which the beneficiaries
9 would have been entitled had all of them survived the
10 decedent passes to the surviving beneficiaries and the
11 surviving descendants of the deceased beneficiaries.
12 Each surviving beneficiary takes the share to which
13 the surviving beneficiary would have been entitled had
14 the deceased beneficiaries survived the decedent.
15 Each deceased beneficiary's surviving descendants who
16 are substituted for the deceased beneficiary take by
17 representation the share to which the deceased
18 beneficiary would have been entitled had the deceased
19 beneficiary survived the decedent. For the purposes
20 of this paragraph, "deceased beneficiary" means a



1 class member who failed to survive the decedent and
2 left one or more surviving descendants;

3 (3) For the purposes of section 560:2-701, words of
4 survivorship, such as in a beneficiary designation to
5 an individual "if he survives me", or in a beneficiary
6 designation to "my surviving children", are not, in
7 the absence of additional evidence, a sufficient
8 indication of an intent contrary to the application of
9 this section; [~~and~~]

10 (4) If a governing instrument creates an alternative
11 beneficiary designation with respect to a beneficiary
12 designation for which a substitute gift is created by
13 paragraph (1) or (2), the substitute gift is
14 superseded by the alternative beneficiary designation
15 [~~only~~] if:

16 (A) The alternative beneficiary designation is in the
17 form of a class gift and one or more members of
18 the class is entitled to take; or

19 (B) The alternative beneficiary designation is not in
20 the form of a class gift and an expressly
21 designated beneficiary of the alternative



1 beneficiary designation is entitled to take[-];

2 and

3 (5) In this section:

4 "Descendant of a grandparent" means an individual who
5 qualifies as a descendant of a grandparent of the
6 decedent under the:

7 (A) Rules of construction applicable to a class gift
8 created in the decedent's beneficiary designation
9 if the beneficiary designation is in the form of
10 a class gift; or

11 (B) Rules for intestate succession if the beneficiary
12 designation is not in the form of a class gift.

13 "Surviving descendants of a deceased beneficiary"
14 means the descendants of a deceased beneficiary or
15 class member who would take under a class gift created
16 in the beneficiary designation."

17 SECTION 32. Section 560:2-707, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) Survivorship required; substitute gift. A future
20 interest under the terms of a trust executed after January 1,
21 1997 is contingent on the beneficiary's surviving the



1 distribution date. If a beneficiary of a future interest under
2 the terms of a trust fails to survive the distribution date, the
3 following apply:

4 (1) Except as provided in paragraph (4), if the future
5 interest is not in the form of a class gift and the
6 deceased beneficiary leaves surviving descendants, a
7 substitute gift is created in the beneficiary's
8 surviving descendants. They take by representation
9 the property to which the beneficiary would have been
10 entitled had the beneficiary survived the distribution
11 date;

12 (2) Except as provided in paragraph (4), if the future
13 interest is in the form of a class gift, other than a
14 future interest to "issue", "descendants", "heirs of
15 the body", "heirs", "next of kin", "relatives", or
16 "family", or a class described by language of similar
17 import, a substitute gift is created in the surviving
18 descendants of any deceased beneficiary. The property
19 to which the beneficiaries would have been entitled
20 had all of them survived the distribution date passes
21 to the surviving beneficiaries and the surviving



1 descendants of the deceased beneficiaries. Each
2 surviving beneficiary takes the share to which the
3 surviving beneficiary would have been entitled had the
4 deceased beneficiaries survived the distribution date.
5 Each deceased beneficiary's surviving descendants who
6 are substituted for the deceased beneficiary take by
7 representation the share to which the deceased
8 beneficiary would have been entitled had the deceased
9 beneficiary survived the distribution date. For the
10 purposes of this paragraph, "deceased beneficiary"
11 means a class member who failed to survive the
12 distribution date and left one or more surviving
13 descendants;

- 14 (3) For the purposes of section 560:2-701, words of
15 survivorship attached to a future interest are not, in
16 the absence of additional evidence, a sufficient
17 indication of an intent contrary to the application of
18 this section. Words of survivorship include words of
19 survivorship that relate to the distribution date or
20 to an earlier or an unspecified time, whether those
21 words of survivorship are expressed in condition-



1 precedent, condition-subsequent, or any other form;

2 and

3 (4) If a governing instrument creates an alternative
4 future interest with respect to a future interest for
5 which a substitute gift is created by paragraph (1) or
6 (2), the substitute gift is superseded by the
7 alternative future interest [~~only~~] if [~~an~~]:

8 (A) The alternative future interest is in the form of
9 a class gift and one or more members of the class
10 is entitled to take in possession or enjoyment;

11 or

12 (B) The alternative future interest is not in the
13 form of a class gift and the expressly designated
14 beneficiary of the alternative future interest is
15 entitled to take in possession or enjoyment.

16 As used in this subsection, "surviving descendants of a deceased
17 beneficiary" means the descendants of a deceased beneficiary or
18 class member who would take under a class gift created in the
19 trust."

20 SECTION 33. Section 560:2-804, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Definitions. In this section:

2 "Disposition or appointment of property" includes a
3 transfer of an item of property or any other benefit to a
4 beneficiary designated in a governing instrument.

5 "Divorce or annulment" means any divorce or annulment, or
6 any dissolution or declaration of invalidity of a marriage, that
7 would exclude the spouse as a surviving spouse within the
8 meaning of section 560:2-802. A decree of separation that does
9 not terminate the [~~status of husband and wife~~] marriage is not a
10 divorce for purposes of this section.

11 "Divorced individual" includes an individual whose marriage
12 has been annulled.

13 "Governing instrument" means a governing instrument
14 executed by:

15 (1) A divorced individual before the divorce or annulment
16 of the individual's marriage to the individual's
17 former spouse; or

18 (2) An individual who is a former reciprocal beneficiary
19 before the termination of the reciprocal beneficiary
20 relationship with the individual's former reciprocal
21 beneficiary.



1 "Relative of the divorced individual's former spouse" means
2 an individual who is related to the divorced individual's former
3 spouse by [~~blood,~~] application of the rules establishing
4 parent-child relationships under subpart _____ of part 1 or
5 affinity and who, after the divorce or annulment, is not related
6 to the divorced individual by [~~blood, adoption,~~] application of
7 the rules establishing parent-child relationships under subpart
8 _____ of part 1 or affinity.

9 "Revocable", with respect to a disposition, appointment,
10 provision, or nomination, means one under which:

11 (1) The divorced individual, at the time of the divorce or
12 annulment, was alone empowered, by law or under the
13 governing instrument, to cancel the designation in
14 favor of the individual's former spouse or former
15 spouse's relative, whether or not the divorced
16 individual was then empowered to designate the
17 individual's self in place of the individual's former
18 spouse or in place of the individual's former spouse's
19 relative and whether or not the divorced individual
20 then had the capacity to exercise the power; or



1 (2) An individual who is a former reciprocal beneficiary,
2 at the time of the termination, was alone empowered,
3 by law or under the governing instrument, to cancel
4 the designation in favor of the individual's former
5 partner or former partner's relative, whether or not
6 the individual was then empowered to designate the
7 individual's self in place of the individual's former
8 partner or in place of the individual's former
9 partner's relative and whether or not the individual
10 who is the former reciprocal beneficiary then had the
11 capacity to exercise the power.

12 "Termination" means the dissolution of a reciprocal
13 beneficiary relationship under chapter 572C between two adults."

14 SECTION 34. Section 560:3-108, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§560:3-108 Probate, testacy and appointment proceedings;**
17 **ultimate time limit.** (a) No [~~informal~~] probate [~~or~~
18 ~~appointment~~] proceeding [~~or formal testacy or~~] to establish a
19 will and related appointment proceeding, other than [a] an
20 ancillary proceeding [~~to probate a will previously probated at~~
21 ~~the testator's domicile and appointment proceedings relating to~~



1 ~~an estate in which there has been a prior appointment~~], may be
2 commenced more than five years after the decedent's death,
3 except:

4 (1) If a previous proceeding was dismissed because of
5 doubt about the fact of the decedent's death,
6 appropriate probate[, ~~appointment, or testacy~~]
7 proceedings may be maintained at any time thereafter
8 upon a finding that the decedent's death occurred
9 before the initiation of the previous proceeding and
10 the applicant or petitioner has not delayed unduly in
11 initiating the subsequent proceeding;

12 (2) Appropriate probate[, ~~appointment, or testacy~~]
13 proceedings may be maintained in relation to the
14 estate of an absent, disappeared or missing person for
15 whose estate a conservator has been appointed, at any
16 time within three years after the conservator becomes
17 able to establish the death of the protected person;

18 (3) A formal probate proceeding to contest an informally
19 probated will and to secure appointment of the person
20 with legal priority for appointment if the contest is
21 successful, may be commenced within:



- 1 (A) Ninety days after receiving notice of an informal
- 2 proceeding pursuant to section 560:3-306;
- 3 (B) Twelve months from the date the will was
- 4 informally admitted to probate; or
- 5 (C) Thirty days from the entry of a formal order
- 6 approving the accounts and settlement of the
- 7 estate by an informally appointed personal
- 8 representative,

9 whichever time period expires first. If an informal
10 proceeding is closed informally, the court in its
11 discretion may allow a will contest to proceed after
12 the limitations period has expired if it determines
13 that notice of the informal probate proceedings was
14 not provided pursuant to section 560:3-306 and not
15 more than five years has elapsed since the decedent's
16 death;

17 ~~[-4] An informal appointment or a formal testacy or~~
18 ~~appointment proceeding may be commenced thereafter if~~
19 ~~no proceedings concerning the succession or estate~~
20 ~~administration have occurred within the five year~~
21 ~~period after decedent's death, but the personal~~



1 ~~representative has no right to possess estate assets~~
 2 ~~as provided in section 560:3-709 beyond that necessary~~
 3 ~~to confirm title thereto in the successors to the~~
 4 ~~estate and claims other than expenses of~~
 5 ~~administration may not be presented against the~~
 6 ~~estate,] and~~

7 [+5+] (4) A formal testacy proceeding may be commenced at
 8 any time after five years from the decedent's death
 9 if [~~in~~]:

10 (A) In the discretion of the court, it would be
 11 equitable to do so[~~]~~ for the purpose of
 12 establishing an instrument to direct or control
 13 the ownership of property passing or
 14 distributable after the decedent's death from one
 15 other than the decedent when the property is to
 16 be appointed by the terms of the decedent's will
 17 [~~or is to pass or be distributed as a part of the~~
 18 ~~decedent's estate or its transfer is otherwise to~~
 19 ~~be controlled by the terms of the decedent's~~
 20 ~~will.]~~;



1 (B) The terms of the decedent's will provide for a
2 distribution to the decedent's revocable living
3 trust;

4 (C) Newly discovered assets of the decedent require
5 administration; or

6 (D) All interested parties who are entitled by
7 statute to notice of the petition join in the
8 petition.

9 (b) A proceeding seeking an adjudication of intestacy and
10 related appointment proceeding may be commenced at any time
11 unless there has been a prior probate proceeding concerning the
12 decedent's estate. If there has been a prior probate
13 proceeding, a formal proceeding or a supervised administration
14 seeking an adjudication of intestacy may be commenced only under
15 the conditions and circumstances set forth in section 560:3-412.

16 ~~[(b)]~~ (c) These limitations do not apply to proceedings to
17 construe probated wills or determine heirs of an intestate.

18 ~~[(e)]~~ (d) In cases under subsection (a)(1) or (2) the date
19 on which a ~~[testacy or appointment]~~ probate proceeding is
20 properly commenced shall be deemed to be the date of the



1 decedent's death for purposes of other limitations provisions of
2 this chapter [~~which~~] that relate to the date of death."

3 SECTION 35. Section 560:3-203, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) A person entitled to letters under subsection (a)(2)
6 to (5) may nominate a qualified person to act as personal
7 representative~~[-]~~, who shall have the same priority as the
8 person making the nomination. Any person aged eighteen and over
9 may renounce the person's right to nominate or to an appointment
10 by appropriate writing filed with the court. When two or more
11 persons share a priority, those of them who do not renounce
12 shall concur in nominating another to act for them, or in
13 applying for appointment."

14 SECTION 36. Section 560:3-301, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Applications for informal probate or informal
17 appointment shall be directed to the registrar, and verified by
18 the applicant to be accurate and complete to the best of the
19 applicant's knowledge and belief as to the following
20 information:



1 (1) Every application for informal probate of a will or
2 for informal appointment of a personal representative,
3 other than a special or successor representative,
4 shall contain the following:

5 (A) A statement of the interest of the applicant,
6 together with the name[]; residence, business,
7 or mailing address[]; and telephone number of
8 the applicant;

9 (B) The name, and date of death of the decedent, the
10 decedent's age, and the county and state of the
11 decedent's domicile at the time of death, and the
12 names and addresses of the spouse or reciprocal
13 beneficiary, children, heirs, and devisees and
14 the ages of any who are minors so far as known or
15 ascertainable with reasonable diligence by the
16 applicant;

17 (C) If the decedent was not domiciled in the State at
18 the time of the decedent's death, a statement
19 showing venue;

20 (D) A statement identifying and indicating the
21 address of any personal representative of the



- 1 decedent appointed in this State or elsewhere
2 whose appointment has not been terminated;
- 3 (E) A statement indicating whether the applicant has
4 received a demand for notice, or is aware of any
5 demand for notice of any probate or appointment
6 proceeding concerning the decedent that may have
7 been filed in this State or elsewhere; and
- 8 (F) That the time limit for informal probate [~~or~~
9 ~~appointment~~] as provided in this article has not
10 expired either because five years or less have
11 passed since the decedent's death, or, if more
12 than five years from death have passed,
13 circumstances as described by section 560:3-108
14 authorizing tardy probate or appointment have
15 occurred;
- 16 (2) An application for informal probate of a will shall
17 state the following in addition to the statements
18 required by paragraph (1):
- 19 (A) That the original of the decedent's last will is
20 in the possession of the court, or accompanies
21 the application, or that an authenticated copy of



1 a will probated, filed, deposited, or lodged in
2 another jurisdiction accompanies the application;
3 (B) That the applicant, to the best of applicant's
4 knowledge, believes the will to have been validly
5 executed; and
6 (C) That after the exercise of reasonable diligence,
7 the applicant is unaware of any instrument
8 revoking the will, and that the applicant
9 believes that the instrument [~~which~~] that is the
10 subject of the application is the decedent's last
11 will;
12 (3) An application for informal appointment of a personal
13 representative to administer an estate under a will
14 shall describe the will by date of execution and state
15 the time and place of probate or the pending
16 application or petition for probate. The application
17 for appointment shall adopt the statements in the
18 application or petition for probate and state the
19 name, address, and priority for appointment of the
20 person whose appointment is sought;



1 (4) An application for informal appointment of an
2 administrator in intestacy shall state in addition to
3 the statements required by paragraph (1):

4 (A) That after the exercise of reasonable diligence,
5 the applicant is unaware of any unrevoked
6 testamentary instrument relating to property
7 having a situs in this State under section
8 560:1-301, or, a statement why any such
9 instrument of which the applicant may be aware is
10 not being probated; and

11 (B) The priority of the person whose appointment is
12 sought and the names of any other persons having
13 a prior or equal right to the appointment under
14 section 560:3-203;

15 (5) An application for appointment of a personal
16 representative to succeed a personal representative
17 appointed under a different testacy status shall refer
18 to the order in the most recent testacy proceeding,
19 state the name and address of the person whose
20 appointment is sought and of the person whose
21 appointment will be terminated if the application is

1 granted, and describe the priority of the applicant;

2 and

3 (6) An application for appointment of a personal
 4 representative to succeed a personal representative
 5 who has tendered a resignation as provided in section
 6 560:3-610(c), or whose appointment has been terminated
 7 by death or removal, shall adopt the statements in the
 8 application or petition [~~which~~] that led to the
 9 appointment of the person being succeeded except as
 10 specifically changed or corrected, state the name and
 11 address of the person who seeks appointment as
 12 successor, and describe the priority of the
 13 applicant."

14 SECTION 37. Section 560:3-303, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "**§560:3-303 Informal probate; proof and findings required.**

17 (a) In an informal proceeding for original probate of a will,
 18 the registrar shall determine whether:

19 (1) The application is complete;



- 1 (2) The applicant has made an oath or affirmation that the
2 statements contained in the application are true to
3 the best of the applicant's knowledge and belief;
- 4 (3) The applicant appears from the application to be an
5 interested person as defined in section 560:1-201;
- 6 (4) On the basis of the statements in the application,
7 venue is proper;
- 8 (5) An original, duly executed and apparently unrevoked
9 will is in the registrar's possession;
- 10 (6) Any notice required by sections 560:3-204 and
11 560:3-306 has been given and that the application is
12 not within section 560:3-304; and
- 13 (7) It appears from the application that the time limit
14 for original probate has not expired.
- 15 (b) The application shall be denied if it indicates that a
16 personal representative has been appointed in another judicial
17 circuit of this State or except as provided in subsection (d),
18 if it appears that this or another will of the decedent has been
19 the subject of a previous probate order.
- 20 (c) A will [~~which~~] that appears to have the required
21 signatures and [~~which~~] contains an attestation clause showing



1 that requirements of execution under section 560:2-502,
2 560:2-503, or 560:2-506 have been met shall be probated without
3 further proof. In other cases, the registrar may assume
4 execution if the will appears to have been properly executed, or
5 the registrar may accept a sworn statement or affidavit of any
6 person having knowledge of the circumstances of execution,
7 whether or not the person was a witness to the will.

8 (d) Informal probate of a will [~~which~~] that has been
9 previously probated elsewhere may be granted at any time upon
10 written application by any interested person, together with
11 deposit of an authenticated copy of the will and of the
12 statement probating it from the office or court where it was
13 first probated.

14 (e) A will from a place [~~which~~] that does not provide for
15 probate of a will after death and [~~which~~] that is not eligible
16 for probate under subsection (a) [7] may be probated in this
17 State upon receipt by the registrar of a duly authenticated copy
18 of the will and a duly authenticated certificate of its legal
19 custodian that the copy filed is a true copy and that the will
20 has become operative under the law of the other place.



1 (f) A will that has been filed, deposited, or lodged in
2 another jurisdiction, but not probated, may be probated in this
3 State upon receipt by the registrar of a duly authenticated copy
4 of the will or a copy of the will and a statement from its legal
5 custodian that the copy filed is a full, true, and correct copy
6 of the original."

7 SECTION 38. Section 560:3-406, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§560:3-406 Formal testacy proceedings; contested cases;**
10 **testimony of attesting witnesses.** [~~(a) If evidence concerning~~
11 ~~execution of an attested will which is not self proved is~~
12 ~~necessary in contested cases, the testimony of at least one of~~
13 ~~the attesting witnesses, if within the State, competent and able~~
14 ~~to testify, is required. Due execution of an attested or~~
15 ~~unattested will may be proved by other evidence.~~

16 ~~(b) If the will is self proved, compliance with signature~~
17 ~~requirements for execution is conclusively presumed and other~~
18 ~~requirements of execution are presumed subject to rebuttal~~
19 ~~without the testimony of any witness upon filing the will and~~
20 ~~the acknowledgment and affidavits annexed or attached thereto,~~
21 ~~unless there is proof of fraud or forgery affecting the~~



1 ~~acknowledgment or affidavit.]~~ In a contested case hearing in
2 which the proper execution of a will is at issue, the following
3 rules apply:

4 (1) If the will is self-proved pursuant to section
5 560:2-504, the will satisfies the requirements for
6 execution without the testimony of any attesting
7 witness, upon filing the will and the acknowledgement
8 and affidavits annexed or attached to it, unless there
9 is evidence of fraud or forgery affecting the
10 acknowledgment or affidavit; and

11 (2) If the will is witnessed pursuant to section
12 560:2-502(a)(3), but not self-proved, the testimony of
13 at least one of the attesting witnesses is required to
14 establish proper execution if within this State,
15 competent, and able to testify. Proper execution may
16 be established by other evidence, including an
17 affidavit of an attesting witness. An attestation
18 clause that is signed by the attesting witnesses
19 raises a rebuttable presumption that the events
20 received in the clause occurred."



1 SECTION 39. Section 560:3-605, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§560:3-605 Demand for bond by interested person. Any
4 person apparently having an interest in the estate worth in
5 excess of [~~\$1000,~~] \$10,000, or any creditor having a claim in
6 excess of [~~\$1000,~~] \$10,000, may make a written demand that a
7 personal representative give bond. The demand shall be filed
8 with the court and a copy mailed to the personal representative,
9 if appointment and qualification have occurred. Thereupon, if
10 ordered by the court, bond is required, but the requirement
11 ceases if the person demanding bond ceases to be interested in
12 the estate, or if bond is excused as provided in section
13 560:3-603 or 560:3-604. After the personal representative has
14 received notice and until the filing of the bond or cessation of
15 the requirement of bond, the personal representative shall
16 refrain from exercising any powers of the office except as
17 necessary to preserve the estate. Failure of the personal
18 representative to meet a requirement of bond by giving suitable
19 bond within thirty days after receipt of notice is cause of the
20 personal representative's removal and appointment of a successor
21 personal representative."



1 SECTION 40. Section 560:3-703, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§560:3-703 General duties; relation and liability to
4 persons interested in estate; standing to sue. (a) A personal
5 representative is a fiduciary who shall observe the standards of
6 care applicable to trustees as described by sections 554D-804,
7 554D-806, and 554D-808(c). A personal representative is under a
8 duty to settle and distribute the estate of the decedent in
9 accordance with the terms of any probated and effective will and
10 this chapter, and as expeditiously and efficiently as is
11 consistent with the best interests of the estate. The personal
12 representative shall use the authority conferred upon the
13 personal representative by this chapter, the terms of the will,
14 if any, and any order in proceedings to which the personal
15 representative is party for the best interests of successors to
16 the estate.

17 (b) A personal representative shall not be surcharged for
18 acts of administration or distribution if the conduct in
19 question was authorized at the time. Subject to other
20 obligations of administration, an informally probated will is
21 authority to administer and distribute the estate according to



1 its terms. An order of appointment of a personal
2 representative, whether issued in informal or formal
3 proceedings, is authority to distribute apparently intestate
4 assets to the heirs of the decedent if, at the time of
5 distribution, the personal representative is not aware of a
6 pending testacy proceeding, a proceeding to vacate an order
7 entered in an earlier testacy proceeding, a formal proceeding
8 questioning the personal representative's appointment or fitness
9 to continue, or a supervised administration proceeding.

10 [~~Nothing in this~~] This section [~~affects~~] does not affect the
11 duty of the personal representative to administer and distribute
12 the estate in accordance with the rights of claimants[7] whose
13 claims have been allowed, the surviving spouse or reciprocal
14 beneficiary, and any minor and dependent children and any
15 pretermitted child of the decedent as described elsewhere in
16 this chapter.

17 (c) Except as to proceedings [~~which~~] that do not survive
18 the death of the decedent, a personal representative of a
19 decedent domiciled in this State at the decedent's death has the
20 same standing to sue and be sued in the courts of this State and



1 the courts of any other jurisdiction as the decedent had
2 immediately prior to death.

3 (d) A personal representative may not be surcharged for a
4 distribution that does not take into consideration the
5 possibility of posthumous pregnancy unless the personal
6 representative, not later than six months after the decedent's
7 death, received notice or had actual knowledge of an intent to
8 use genetic material in assisted reproduction."

9 SECTION 41. Section 560:3-720, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§560:3-720 Expenses in estate litigation.** If any
12 personal representative or person nominated as personal
13 representative, or an heir or beneficiary if a personal
14 representative or person nominated as a personal representative
15 refuses to act, defends or prosecutes any proceeding regarding
16 the validity of a will in good faith, whether successful or not
17 that person is entitled to receive from the estate [~~that~~
18 ~~person's necessary~~] reasonable costs, expenses, and
19 disbursements, including reasonable attorneys' fees [incurred],
20 whether or not counsel has been retained on a contingency fee
21 basis."



1 SECTION 42. Section 560:3-801, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Unless notice has already been given under this
4 section, a person applying or petitioning for appointment of a
5 personal representative or probate of a will or declaration of
6 an intestacy may publish a notice to creditors once a week for
7 [~~three~~] two successive weeks in a newspaper of general
8 circulation in the judicial circuit in which the application or
9 petition is filed announcing the person's application or
10 petition and the name and address of the person nominated as
11 personal representative, if any, and notifying creditors of the
12 estate to present their claims no later than four months after
13 the date of the first publication of the notice or be forever
14 barred. The notice may be combined with any published notice of
15 the pendency of the probate proceedings."

16 SECTION 43. Section 560:3-803, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) All claims against either a decedent or a decedent's
19 estate which arose before the death of the decedent, including
20 claims of the State and any subdivision thereof, whether due or
21 to become due, absolute or contingent, liquidated or



1 unliquidated, founded on contract, tort, or other legal basis,
2 if not barred earlier by another statute of limitations or
3 non-claim statute, are barred against the estate, the personal
4 representative, the decedent's trustee and the heirs and
5 devisees of the decedent, unless presented within the earlier of
6 the following:

7 (1) No later than:

8 (A) Four months after the date of the first
9 publication of notice to creditors if notice is
10 given in compliance with section 560:3-801(a); or

11 (B) Sixty days after the [~~mailing or other delivery~~]
12 service of written notice, as provided in section
13 560:3-801(b); whichever period (A) or (B) expires
14 later; or

15 (2) Within eighteen months after the decedent's death, if
16 notice to creditors has not been published as provided
17 in section 560:3-801(a) or [~~delivered~~] served as
18 provided in section 560:3-801(b)."

19 SECTION 44. Section 560:3-806, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) As to claims presented in the manner described in
2 section 560:3-804 within the time limit prescribed in section
3 560:3-803, the personal representative may [~~mail~~] serve a notice
4 [~~to~~] upon any claimant stating that the claim has been
5 disallowed. If, after allowing or disallowing a claim, the
6 personal representative changes the decision concerning the
7 claim, the personal representative shall notify the claimant.
8 The personal representative may not change a disallowance of a
9 claim after the time for the claimant to file a petition for
10 allowance or to commence a proceeding on the claim has run and
11 the claim has been barred. Every claim [~~which~~] that is
12 disallowed in whole or in part by the personal representative is
13 barred so far as not allowed unless the claimant files a
14 petition for allowance in the court or commences a proceeding
15 against the personal representative not later than sixty days
16 after the [~~mailing~~] service of the notice of disallowance or
17 partial allowance if the notice warns the claimant of the
18 impending bar. If the notice does not warn the claimant of the
19 impending sixty-day bar, then the claim shall be barred if no
20 petition for allowance or other proceeding on the claim has been
21 brought within eighteen months of the date of the decedent's



1 death. Failure of the personal representative to [~~mail~~] serve
2 notice [~~to~~] upon a claimant of action on the claimant's claim
3 for sixty days after the time for original presentation of the
4 claim has expired has the effect of a notice of allowance."

5 SECTION 45. Section 560:3-915, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) If the heir or devisee is under disability other than
8 minority, the personal representative is authorized to
9 distribute to:

- 10 (1) An attorney in fact who has authority under a power of
11 attorney to receive property for that person; or
12 (2) The spouse or reciprocal beneficiary, parent, or other
13 close relative with whom the person under disability
14 resides if the distribution is of amounts not
15 exceeding [~~\$10,000~~] \$30,000 a year, or property not
16 exceeding [~~\$10,000~~] \$30,000 in value, unless the court
17 authorizes a larger amount or greater value.

18 Persons receiving money or property for the disabled person are
19 obligated to apply the money or property to the support of that
20 person, but may not pay themselves except by way of
21 reimbursement for out-of-pocket expenses for goods and services



1 necessary for the support of the disabled person. Excess sums
2 must be preserved for future support of the disabled person.
3 The personal representative is not responsible for the proper
4 application of money or property distributed pursuant to this
5 subsection."

6 SECTION 46. Section 560:4-205, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§560:4-205 Powers.** A domiciliary foreign personal
9 representative who has complied with section 560:4-204 may
10 exercise as to assets in this State all powers of a local
11 personal representative and may maintain actions and proceedings
12 in this State subject to any conditions:

- 13 (1) Limitations on the person representative's powers in
14 the domiciliary proceeding; and
15 (2) Conditions imposed upon nonresident parties
16 generally."

17 SECTION 47. Section 560:3-916, Hawaii Revised Statutes, is
18 repealed.

19 [~~"§560:3-916 Apportionment of estate taxes. (a) For~~
20 ~~purposes of this section:~~



1 ~~"Estate" means the gross estate of a decedent as determined~~
2 ~~for the purpose of federal estate tax and the estate tax payable~~
3 ~~to this State.~~

4 ~~"Fiduciary" means personal representative or trustee.~~

5 ~~"Person" means any individual, partnership, association,~~
6 ~~joint stock company, corporation, government, political~~
7 ~~subdivision, governmental agency, or local governmental agency.~~

8 ~~"Person interested in the estate" means any person entitled~~
9 ~~to receive, or who has received, from a decedent or by reason of~~
10 ~~the death of a decedent any property or interest therein~~
11 ~~included in the decedent's estate. It includes a personal~~
12 ~~representative, conservator, and trustee.~~

13 ~~"State" means any state, territory, or possession of the~~
14 ~~United States, the District of Columbia, and the Commonwealth of~~
15 ~~Puerto Rico.~~

16 ~~"Tax" means the federal estate tax and the additional~~
17 ~~inheritance tax imposed by Hawaii and interest and penalties~~
18 ~~imposed in addition to the tax.~~

19 ~~(b) Except as provided in subsection (j) and, unless the~~
20 ~~will otherwise provides, the tax shall be apportioned among all~~
21 ~~persons interested in the estate. The apportionment is to be~~



1 ~~made in the proportion that the value of the interest of each~~
2 ~~person interested in the estate bears to the total value of the~~
3 ~~interests of all persons interested in the estate. The values~~
4 ~~used in determining the tax are to be used for that purpose. If~~
5 ~~the decedent's will directs a method of apportionment of tax~~
6 ~~different from the method described in this chapter, the method~~
7 ~~described in the will controls.~~

8 ~~(c) The expenses reasonably incurred by any fiduciary and~~
9 ~~by other persons interested in the estate in connection with the~~
10 ~~determination of the amount and apportionment of the tax shall~~
11 ~~be apportioned as provided in subsection (b) and charged and~~
12 ~~collected as a part of the tax apportioned. If the court finds~~
13 ~~it is inequitable to apportion the expenses as provided in~~
14 ~~subsection (b), it may direct apportionment equitably.~~

15 ~~(d) (1) The court in which venue lies for the administration~~
16 ~~of the estate of a decedent, on petition for the~~
17 ~~purpose may determine the apportionment of the tax;~~

18 ~~(2) If the court finds that it is inequitable to apportion~~
19 ~~interest and penalties in the manner provided in~~
20 ~~subsection (b), because of special circumstances, it~~



1 ~~may direct apportionment thereof in the manner it~~
2 ~~finds equitable;~~

3 ~~(3) If the court finds that the assessment of penalties~~
4 ~~and interest assessed in relation to the tax is due to~~
5 ~~delay caused by the negligence of the fiduciary, the~~
6 ~~court may charge the fiduciary with the amount of the~~
7 ~~assessed penalties and interest;~~

8 ~~(4) In any action to recover from any person interested in~~
9 ~~the estate the amount of the tax apportioned to the~~
10 ~~person in accordance with this chapter the~~
11 ~~determination of the court in respect thereto shall be~~
12 ~~prima facie correct.~~

13 ~~(e)(1) The personal representative or other person in~~
14 ~~possession of the property of the decedent required to~~
15 ~~pay the tax may withhold from any property~~
16 ~~distributable to any person interested in the estate,~~
17 ~~upon its distribution to that person, the amount of~~
18 ~~tax attributable to that person's interest. If the~~
19 ~~property in possession of the personal representative~~
20 ~~or other person required to pay the tax and~~
21 ~~distributable to any person interested in the estate~~



1 ~~is insufficient to satisfy the proportionate amount of~~
2 ~~the tax determined to be due from the person, the~~
3 ~~personal representative or other person required to~~
4 ~~pay the tax may recover the deficiency from the person~~
5 ~~interested in the estate. If the property is not in~~
6 ~~the possession of the personal representative or the~~
7 ~~other person required to pay the tax, the personal~~
8 ~~representative or the other person required to pay the~~
9 ~~tax may recover from any person interested in the~~
10 ~~estate the amount of the tax apportioned to the person~~
11 ~~in accordance with this chapter;~~

12 ~~(2) If property held by the personal representative is~~
13 ~~distributed prior to final apportionment of the tax,~~
14 ~~the distributee shall provide a bond or other security~~
15 ~~for the apportionment liability in the form and amount~~
16 ~~prescribed by the personal representative.~~

17 ~~(f)(1) In making an apportionment, allowances shall be made~~
18 ~~for any exemptions granted, any classification made of~~
19 ~~persons interested in the estate and for any~~
20 ~~deductions and credits allowed by the law imposing the~~
21 ~~tax;~~



- 1 ~~(2) Any exemption or deduction allowed by reason of the~~
2 ~~relationship of any person to the decedent or by~~
3 ~~reason of the purposes of the gift inures to the~~
4 ~~benefit of the person bearing such relationship or~~
5 ~~receiving the gift; but if an interest is subject to a~~
6 ~~prior present interest which is not allowable as a~~
7 ~~deduction, the tax apportionable against the present~~
8 ~~interest shall be paid from principal;~~
- 9 ~~(3) Any deduction for property previously taxed and any~~
10 ~~credit for gift taxes or death taxes of a foreign~~
11 ~~country paid by the decedent or the decedent's estate~~
12 ~~inures to the proportionate benefit of all persons~~
13 ~~liable to apportionment;~~
- 14 ~~(4) Any credit for inheritance, succession or estate taxes~~
15 ~~or taxes in the nature thereof applicable to property~~
16 ~~or interests includable in the estate, inures to the~~
17 ~~benefit of the persons or interests chargeable with~~
18 ~~the payment thereof to the extent proportionately that~~
19 ~~the credit reduces the tax;~~
- 20 ~~(5) To the extent that property passing to or in trust for~~
21 ~~a surviving spouse or reciprocal beneficiary or any~~



1 ~~charitable, public or similar purpose is not an~~
2 ~~allowable deduction for purposes of the tax solely by~~
3 ~~reason of an inheritance tax or other death tax~~
4 ~~imposed upon and deductible from the property, the~~
5 ~~property is not included in the computation provided~~
6 ~~for in subsection (b), and to that extent no~~
7 ~~apportionment is made against the property. The~~
8 ~~sentence immediately preceding does not apply to any~~
9 ~~case if the result would be to deprive the estate of a~~
10 ~~deduction otherwise allowable under section 2053(d) of~~
11 ~~the Internal Revenue Code of 1986, as amended, of the~~
12 ~~United States, relating to deduction for state death~~
13 ~~taxes on transfers for public, charitable, or~~
14 ~~religious uses.~~

15 ~~(g) No interest in income and no estate for years or for~~
16 ~~life or other temporary interest in any property or fund is~~
17 ~~subject to apportionment as between the temporary interest and~~
18 ~~the remainder. The tax on the temporary interest and the tax,~~
19 ~~if any, on the remainder is chargeable against the corpus of the~~
20 ~~property or funds subject to the temporary interest and~~
21 ~~remainder.~~



1 ~~(h) Neither the personal representative nor other person~~
2 ~~required to pay the tax is under any duty to institute any~~
3 ~~action to recover from any person interested in the estate the~~
4 ~~amount of the tax apportioned to the person until the expiration~~
5 ~~of the three months next following final determination of the~~
6 ~~tax. A personal representative or other person required to pay~~
7 ~~the tax who institutes the action within a reasonable time after~~
8 ~~the three month period is not subject to any liability or~~
9 ~~surcharge because any portion of the tax apportioned to any~~
10 ~~person interested in the estate was collectible at a time~~
11 ~~following the death of the decedent but thereafter became~~
12 ~~uncollectible. If the personal representative or other person~~
13 ~~required to pay the tax cannot collect from any person~~
14 ~~interested in the estate the amount of the tax apportioned to~~
15 ~~the person, the amount not recoverable shall be equitably~~
16 ~~apportioned among the other persons interested in the estate who~~
17 ~~are subject to apportionment.~~

18 ~~(i) A personal representative acting in another state or a~~
19 ~~person required to pay the tax domiciled in another state may~~
20 ~~institute an action in the courts of this State and may recover~~
21 ~~a proportionate amount of the federal estate tax, of an estate~~



1 ~~tax payable to another state or of a death duty due by a~~
2 ~~decedent's estate to another state, from a person interested in~~
3 ~~the estate who is either domiciled in this State or who owns~~
4 ~~property in this State subject to attachment or execution. For~~
5 ~~the purposes of the action the determination of apportionment by~~
6 ~~the court having jurisdiction of the administration of the~~
7 ~~decedent's estate in the other state is prima facie correct.~~

8 ~~(j) If the liabilities of persons interested in the estate~~
9 ~~as prescribed by this chapter differ from those which result~~
10 ~~under the federal estate tax law, the liabilities imposed by the~~
11 ~~federal law will control and the balance of this section shall~~
12 ~~apply as if the resulting liabilities had been prescribed~~
13 ~~herein."]~~

14 PART V

15 SECTION 48. In codifying the new sections added by
16 sections 2 and 5 of this Act, the revisor of statutes shall
17 substitute appropriate section numbers for the letters used in
18 designating the new sections in this Act.

19 SECTION 49. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.



1 SECTION 50. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 51. This Act shall take effect upon its approval;
4 provided that section 5 shall take effect on July 1, 2023.

5

INTRODUCED BY: *Jan*

By Request

JAN 19 2023



Report Title:

Judiciary Package; Probate Code

Description:

Updates articles I through IV of the Uniform Probate Code to adjust for inflation, provide additional clarity, resolve issues that have arisen in probate practice, and address societal changes in familial relations.

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

