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# A BILL FOR AN ACT

RELATING TO ATTORNEY'S FEES AND COSTS IN HAWAII FAMILY COURT.

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

1           SECTION 1. The supreme court held in *Cox v. Cox*, SCWC-12-  
2 0000762, (Haw. Aug. 16, 2016) (2016 W.L. 4367248) that Hawaii  
3 Family Court Rules (HFCR) rule 68 is invalid because it is not  
4 consistent with section 580-47, Hawaii Revised Statutes (HRS).  
5 HFCR rule 68 authorizes the family court to award attorney's  
6 fees and costs in certain types of cases to a party that extends  
7 a settlement offer if the offer is not accepted and the final  
8 judgment in its entirety is patently not more favorable to the  
9 offeree than the settlement offer. The supreme court  
10 invalidated HFCR rule 68 in *Cox v. Cox* without a motion or  
11 briefing by the parties and, therefore, the parties, the general  
12 public, and the Hawaii State Bar Association had no opportunity  
13 to be heard.

14           The legislature finds that HFCR rule 68 should not have  
15 been invalidated and that section 580-47, HRS, should be  
16 clarified to incorporate the offer of settlement provisions of  
17 HFCR rule 68.



1 SECTION 2. Section 580-47, Hawaii Revised Statutes, is  
2 amended by amending subsection (f) to read as follows:

3 "(f) Attorney's fees and costs[-] shall be allowed as  
4 follows:

5 (1) The court hearing any motion for orders either  
6 revising an order for the custody, support,  
7 maintenance, and education of the children of the  
8 parties, or an order for the support and maintenance  
9 of one party by the other, or a motion for an order to  
10 enforce any such order or any order made under  
11 subsection (a) [~~of this section~~], may make such orders  
12 requiring either party to pay or contribute to the  
13 payment of the attorney's fees, costs, and expenses of  
14 the other party relating to such motion and hearing as  
15 shall appear just and equitable after consideration of  
16 the respective merits of the parties, the relative  
17 abilities of the parties, the economic condition of  
18 each party at the time of the hearing, the burdens  
19 imposed upon either party for the benefit of the  
20 children of the parties, the concealment of or failure  
21 to disclose income or an asset, or violation of a



1           restraining order issued under section 580-10(a) or  
2           (b), if any, by either party, and all other  
3           circumstances of the case[-]; and  
4        (2) At least twenty days before any contested hearing is  
5        scheduled to begin pursuant to section 571-11, 571-12,  
6        571-13, or 571-14, excluding law violations, criminal  
7        matters, and child protection matters, any party may  
8        serve upon the adverse party an offer to allow a  
9        judgment to be entered to the effect specified in the  
10       offer. The offer may be made as to all or some of the  
11       issues, including custody and visitation. The offer  
12       shall be filed with the court only if it is accepted.  
13       If within ten days after service of the offer the  
14       adverse party serves written notice that the offer is  
15       accepted, any party may then file the offer and notice  
16       of acceptance together with proof of service thereof  
17       and thereupon the court shall treat those issues as  
18       uncontested. An offer not accepted shall be deemed  
19       withdrawn and evidence thereof shall not be  
20       admissible, except in a proceeding to determine costs  
21       and attorney's fees. If the judgment, in its



1           entirety, finally obtained by the offeree is patently  
2           not more favorable than the offer, the offeree shall  
3           pay the costs, including reasonable attorney's fees  
4           incurred after making the offer, unless the court  
5           shall specifically determine that the award would be  
6           inequitable."

7           SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Family Court Rules; Settlement Offer; Award of Attorney's Fees and Costs

**Description:**

Establishes a procedure to tender settlement offers in certain family court cases so that the party extending the offer may be entitled to its attorney's fees and costs if the offer is not accepted and the offeree does not obtain a judgment that, in its entirety, is patently more favorable than the offer. (HB78 HD1)

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

