
A BILL FOR AN ACT

RELATING TO THE UNIFORM PROBATE CODE.

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

1 PART I

2 SECTION 1. The purpose of this Act is to update articles I
3 through IV of the Uniform Probate Code, with appropriate
4 amendments to reflect Hawaii law and practice where relevant.
5 Adopted in Hawaii in 1969 and last updated in 1996, the Uniform
6 Probate Code is a national codification of the law of probate,
7 which provides for greater clarity and uniformity in probate law
8 and interpretation. This Act makes necessary updates to the
9 Uniform Probate Code to adjust for inflation, provide additional
10 clarity, resolve issues that have arisen in probate practice,
11 and address societal changes in familial relations.

12 PART II

13 SECTION 2. Chapter 560, Hawaii Revised Statutes, is
14 amended by adding a new subpart to article II, part 1, to be
15 appropriately designated and to read as follows:

16 " . PARENT-CHILD RELATIONSHIP

17 **§560:2-A Definitions.** In this subpart:



1 "Adoptee" means an individual who is adopted.

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

5 "Divorce" includes an annulment, dissolution, and
6 declaration of invalidity of a marriage.

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

- 11 (1) Fulfilling parental responsibilities toward the child;
- 12 (2) Materially participating in the child's upbringing;
- 13 and
- 14 (3) Residing with the child in the same household as a
15 regular member of that household.

16 "Genetic father" means the individual whose sperm
17 fertilized the egg of a child's genetic mother; provided that if
18 the father-child relationship is established by the presumption
19 of paternity under chapter 584, "genetic father" means only the
20 individual for whom that relationship is established.



1 "Genetic mother" means the individual whose egg was
2 fertilized by the sperm of a child's genetic father.

3 "Genetic parent" means a child's genetic father or genetic
4 mother.

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

8 "Relative" means a grandparent or a descendant of a
9 grandparent.

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

16 **§560:2-C No distinction based on marital status.** Except
17 as otherwise provided in sections 560:2-114, 560:2-E, 560:2-F,
18 or 560:2-G, a parent-child relationship shall be deemed to exist
19 between a child and the child's genetic parents, regardless of
20 the parents' marital status.



1 **§560:2-D Adoptee and adoptee's adoptive parent or parents.**

2 A parent-child relationship shall be deemed to exist between an
3 adoptee and the adoptee's adoptive parent or parents. For
4 purposes of this section:

5 (1) An individual who is in the process of being adopted
6 by a married couple or reciprocal beneficiaries when
7 one of the spouses or reciprocal beneficiaries dies
8 shall be treated as adopted by the deceased spouse or
9 reciprocal beneficiary if the adoption is subsequently
10 granted to the decedent's surviving spouse or
11 reciprocal beneficiary; and

12 (2) A child of a genetic parent who is in the process of
13 being adopted by a genetic parent's spouse or
14 reciprocal beneficiary when the spouse or reciprocal
15 beneficiary dies shall be treated as adopted by the
16 deceased spouse or reciprocal beneficiary if the
17 genetic parent survives the deceased spouse or
18 reciprocal beneficiary by one hundred twenty hours;
19 provided that a child shall be treated as adopted by a
20 deceased spouse or reciprocal beneficiary for the
21 purpose of this paragraph if, after a parent-child



1 relationship is established between a child of
2 assisted reproduction and a parent under section
3 560:2-F, or between a gestational child and a parent
4 under section 560:2-G, the child is in the process of
5 being adopted by the parent's spouse or reciprocal
6 beneficiary when the spouse or reciprocal beneficiary
7 dies.

8 **§560:2-E Adoptee and adoptee's genetic parents.** (a)

9 Except as otherwise provided in subsections (b) through (e), a
10 parent-child relationship shall not be deemed to exist between
11 an adoptee and the adoptee's genetic parents.

12 (b) A parent-child relationship shall be deemed to exist
13 between an individual who is adopted by the spouse or reciprocal
14 beneficiary of either genetic parent and:

- 15 (1) The genetic parent whose spouse or reciprocal
16 beneficiary adopted the individual; and
17 (2) The other genetic parent, but only for the purpose of
18 the right of the adoptee or a descendant of the
19 adoptee to inherit from or through the other genetic
20 parent.



1 (c) A parent-child relationship shall be deemed to exist
2 between both genetic parents and an individual who is adopted by
3 a relative of a genetic parent, or by the spouse, reciprocal
4 beneficiary, or surviving spouse or reciprocal beneficiary of a
5 relative of a genetic parent, but only for the purpose of the
6 right of the adoptee or a descendant of the adoptee to inherit
7 from or through either genetic parent.

8 (d) A parent-child relationship shall be deemed to exist
9 between both genetic parents and an individual who is adopted
10 after the death of both genetic parents, but only for the
11 purpose of the right of the adoptee or a descendant of the
12 adoptee to inherit through either genetic parent.

13 (e) If, after a parent-child relationship is established
14 between a child of assisted reproduction and a parent or parents
15 under section 560:2-F, or between a gestational child and a
16 parent or parents under section 560:2-G, the child is adopted by
17 another or others, the child's parent or parents under section
18 560:2-F or 560:2-G shall be treated as the child's genetic
19 parent or parents for the purpose of this section.

20 **§560:2-F Child conceived by assisted reproduction other**
21 **than a child born to gestational carrier.** (a) In this section:



1 "Birth mother" means an individual, other than a
2 gestational carrier under section 560:2-G, who gives birth to a
3 child of assisted reproduction. "Birth mother" is not limited
4 to an individual who is the child's genetic mother.

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

- 8 (1) A spouse who provides sperm or eggs that are used for
9 assisted reproduction by a gestational spouse;
- 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 shall not be deemed to
16 exist between a child of assisted reproduction and a third-party
17 donor.
- 18 (c) A parent-child relationship shall be deemed to exist
19 between a child of assisted reproduction and the child's birth
20 mother.



1 (d) Except as otherwise provided in subsections (i) and
2 (j), a parent-child relationship shall be deemed to exist
3 between a child of assisted reproduction and the spouse of the
4 child's birth mother if the spouse provided the sperm that the
5 birth mother used during the spouse's lifetime for assisted
6 reproduction.

7 (e) A birth certificate identifying an individual other
8 than the birth mother as the other parent of a child of assisted
9 reproduction shall presumptively establish a parent-child
10 relationship between the child and that individual.

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



- 1 (1) Signed a record, before or after the child's birth,
2 that, considering all the facts and circumstances,
3 evidences the individual's consent; or
- 4 (2) In the absence of a signed record under paragraph (1):
- 5 (A) Functioned as a parent of the child no later than
6 two years after the child's birth;
- 7 (B) Intended to function as a parent of the child no
8 later than two years after the child's birth but
9 was prevented from carrying out that intent by
10 death, incapacity, or other circumstances; or
- 11 (C) Intended to be treated as a parent of a
12 posthumously conceived child, if that intent is
13 established by clear and convincing evidence.
- 14 (g) For the purpose of subsection (f)(1), neither an
15 individual who signed a record more than two years after the
16 birth of the child, nor a relative of that individual who is not
17 also a relative of the birth mother, inherits from or through
18 the child unless the individual functioned as a parent of the
19 child before the child reached eighteen years of age.
- 20 (h) For the purpose of subsection (f)(2):



- 1 (1) If the birth mother is married and no divorce
2 proceeding is pending, or in a reciprocal beneficiary
3 relationship, in the absence of clear and convincing
4 evidence to the contrary, the birth mother's spouse or
5 reciprocal beneficiary shall be deemed to satisfy
6 subsection (f) (2) (A) or (B); and
- 7 (2) If the birth mother is a surviving spouse and at the
8 death of the birth mother's deceased spouse no divorce
9 proceeding was pending, or is the surviving reciprocal
10 beneficiary, in the absence of clear and convincing
11 evidence to the contrary, the birth mother's deceased
12 spouse or reciprocal beneficiary shall be deemed to
13 satisfy subsection (f) (2) (B) or (C).
- 14 (i) If a married couple is divorced before placement of
15 eggs, sperm, or embryos, a child resulting from the assisted
16 reproduction shall not be treated as a child of the birth
17 mother's former spouse, unless the former spouse consented in a
18 record that, if assisted reproduction were to occur after
19 divorce, the child would be treated as the former spouse's
20 child.



1 (j) If, in a record, an individual withdraws consent to
2 assisted reproduction before placement of eggs, sperm, or
3 embryos, a child resulting from the assisted reproduction shall
4 not be treated as a child of that individual, unless the
5 individual subsequently satisfies subsection (f).

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

11 (1) In utero no later than thirty-six months after the
12 individual's death; or

13 (2) Born no later than forty-five months after the
14 individual's death.

15 **§560:2-G Child born to gestational carrier.** (a) In this
16 section:

17 "Gestational agreement" means an enforceable or
18 unenforceable agreement for assisted reproduction in which an
19 individual agrees to carry a child to birth for an intended
20 parent, intended parents, or an individual described in
21 subsection (e).



1 "Gestational carrier" means an individual who is not an
2 intended parent who gives birth to a child under a gestational
3 agreement. "Gestational carrier" is not limited to an
4 individual who is the child's genetic mother.

5 "Gestational child" means a child born to a gestational
6 carrier under a gestational agreement.

7 "Intended parent" means an individual who entered into a
8 gestational agreement providing that the individual will be the
9 parent of a child born to a gestational carrier by means of
10 assisted reproduction. "Intended parent" is not limited to an
11 individual who has a genetic relationship with the child.

12 (b) A parent-child relationship shall be deemed to be
13 conclusively established by a court order designating the parent
14 or parents of a gestational child.

15 (c) A parent-child relationship between a gestational
16 child and the gestational child's carrier shall not be deemed to
17 exist unless the gestational carrier is:

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



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

4 (d) In the absence of a court order under subsection (b),
5 a parent-child relationship shall be deemed to exist between a
6 gestational child and an intended parent who:

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

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

10 (A) There were two intended parents, and the other
11 intended parent functioned as a parent of the
12 child no later than two years after the child's
13 birth;

14 (B) There were two intended parents, the other
15 intended parent also died while the gestational
16 carrier was pregnant, and a relative of either
17 deceased intended parent or the spouse,
18 reciprocal beneficiary, or surviving spouse or
19 reciprocal beneficiary of a relative of either
20 deceased intended parent functioned as a parent



1 of the child no later than two years after the
2 child's birth; or

3 (C) There was no other intended parent and a relative
4 of the deceased intended parent, or the spouse,
5 reciprocal beneficiary, or surviving spouse or
6 reciprocal beneficiary of a relative of the
7 deceased intended parent, functioned as a parent
8 of the child no later than two years after the
9 child's birth.

10 (e) In the absence of a court order under subsection (b),
11 a parent-child relationship shall be deemed to exist between a
12 gestational child and an individual whose sperm or eggs were
13 used after the individual's death or incapacity to conceive a
14 child under a gestational agreement entered into after the
15 individual's death or incapacity if the individual intended to
16 be treated as the parent of the child. The individual's intent
17 may be shown by:

18 (1) A record signed by the individual that, considering
19 all the facts and circumstances, evidences the
20 individual's intent; or



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

3 (f) Except as otherwise provided in subsection (g), and
4 unless there is clear and convincing evidence of a contrary
5 intent, an individual shall be deemed to have intended to be
6 treated as the parent of a gestational child for purposes of
7 subsection (e) (2) if:

8 (1) The individual, before death or incapacity, deposited
9 the sperm or eggs that were used to conceive the
10 child;

11 (2) When the individual deposited the sperm or eggs, the
12 individual was married, and no divorce proceeding was
13 pending; and

14 (3) The individual's spouse or reciprocal beneficiary, or
15 surviving spouse or reciprocal beneficiary, functioned
16 as a parent of the child no later than two years after
17 the child's birth.

18 (g) The presumption under subsection (f) shall not apply
19 if there is:

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

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



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

5 (1) In utero no later than thirty-six months after the
6 individual's death; or

7 (2) Born no later than forty-five months after the
8 individual's death.

9 (i) This section shall not affect other laws of this State
10 governing the enforceability or validity of a gestational
11 agreement.

12 **§560:2-H Equitable adoption.** This subpart shall not
13 affect the doctrine of equitable adoption."

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

18 "A. GENERAL PROVISIONS"

19 PART III



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

4 "§560:2- Reformation to correct mistakes. The court
5 may reform the terms of a governing instrument, even if
6 unambiguous, to conform the terms to the transferor's intention
7 if it is proved by clear and convincing evidence what the
8 transferor's intention was and that the terms of the governing
9 instrument were affected by a mistake of fact or law, whether in
10 expression or inducement.

11 §560:2- Modification to achieve transferor's tax
12 objectives. To achieve the transferor's tax objectives, the
13 court may modify the terms of a governing instrument in a manner
14 that is not contrary to the transferor's probable intention.
15 The court may provide that the modification has retroactive
16 effect."

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

20 "PART . UNIFORM ESTATE TAX APPORTIONMENT ACT



1 **§560:3-A Short title.** This part may be cited as the
2 Uniform Estate Tax Apportionment Act.

3 **§560:3-B Definitions.** In this part:

4 "Apportionable estate" means the value of the gross estate
5 as finally determined for purposes of the estate tax to be
6 apportioned, reduced by:

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

9 (2) The value of any interest in property that, for
10 purposes of the tax, qualifies for a marital or
11 charitable deduction or is otherwise deductible or
12 exempt; and

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

15 "Estate tax" means a federal, state, or foreign tax imposed
16 because of the death of an individual and any interest and
17 penalties associated with the tax. "Estate tax" does not
18 include an inheritance tax, income tax, or generation-skipping
19 transfer tax incurred on a direct skip taking effect at death.

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



1 "Person" means an individual, corporation, business trust,
2 estate, trust, partnership, limited liability company,
3 association, joint venture, public corporation, government,
4 governmental subdivision, agency, or instrumentality, or any
5 other legal or commercial entity.

6 "Ratable" or "ratably" means apportioned or allocated pro
7 rata, according to the relative values of interests to which the
8 term is applied.

9 "Time-limited interest" means an interest in property that
10 terminates on a lapse of time or on the occurrence or
11 nonoccurrence of an event or that is subject to the exercise of
12 discretion that could transfer a beneficial interest to another
13 person. "Time-limited interest" does not include a cotenancy
14 unless the cotenancy itself is a time-limited interest.

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



1 **§560:3-C Apportionment by will or other dispositive**
2 **instrument.** (a) Except as otherwise provided in subsection
3 (c), the following rules shall apply:

4 (1) To the extent that a provision of a decedent's will
5 expressly and unambiguously directs the apportionment
6 of an estate tax, the tax shall be apportioned
7 accordingly;

8 (2) Any portion of an estate tax not apportioned pursuant
9 to paragraph (1) shall be apportioned in accordance
10 with any revocable trust of which the decedent was the
11 settlor that expressly and unambiguously directs the
12 apportionment of an estate tax. If conflicting
13 apportionment provisions appear in two or more
14 revocable trust instruments, the provisions in the
15 most recently dated instrument shall prevail. For
16 purposes of this paragraph:

17 (A) A trust is revocable if it was revocable
18 immediately after the trust instrument was
19 executed, even if the trust subsequently becomes
20 irrevocable; and



1 (B) The date of an amendment to a revocable trust
2 instrument is the date of the amendment
3 instrument only if the amendment contains an
4 apportionment provision; and

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

14 (b) Subject to subsection (c), and unless the decedent
15 expressly and unambiguously directs the contrary, the following
16 rules shall apply:

17 (1) If an apportionment provision directs that a person
18 receiving an interest in property under an instrument
19 is to be exonerated from the responsibility to pay an
20 estate tax that would otherwise be apportioned to the
21 interest:



- 1 (A) The tax attributable to the exonerated interest
2 shall be apportioned among the other persons
3 receiving interests passing under the instrument;
4 or
- 5 (B) If the values of the other interests are less
6 than the tax attributable to the exonerated
7 interest, the deficiency shall be apportioned
8 ratably among the other persons receiving
9 interests in the apportionable estate that are
10 not exonerated from apportionment of the tax;
- 11 (2) If an apportionment provision directs that an estate
12 tax is to be apportioned to an interest in property, a
13 portion of which qualifies for a marital or charitable
14 deduction, the estate tax shall first be apportioned
15 ratably among the holders of the portion that does not
16 qualify for a marital or charitable deduction and then
17 apportioned ratably among the holders of the
18 deductible portion to the extent that the value of the
19 nondeductible portion is insufficient;
- 20 (3) Except as otherwise provided in paragraph (4), if any
21 apportionment provision directs that an estate tax be



1 apportioned to property in which one or more
2 time-limited interests exist, other than interests in
3 a specified property under section 560:3-G, the tax
4 shall be apportioned to the principal of the property,
5 regardless of the deductibility of some of the
6 interests in that property; and

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

16 (c) A provision that apportions an estate tax shall be
17 deemed ineffective to the extent that it increases the tax
18 apportioned to a person having an interest in the gross estate
19 over which the decedent had no power to transfer immediately
20 before the decedent executed the instrument in which the
21 apportionment direction was made. For purposes of this



1 subsection, a testamentary power of appointment is a power to
2 transfer the property that is subject to the power.

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

- 8 (1) Subject to paragraphs (2), (3), and (4), the estate
9 tax shall be apportioned ratably to each person that
10 has an interest in the apportionable estate;
- 11 (2) A generation-skipping transfer tax incurred on a
12 direct skip taking effect at death shall be charged to
13 the person to which the interest in property is
14 transferred;
- 15 (3) If property is included in the decedent's gross estate
16 because of section 2044 of the Internal Revenue Code
17 of 1986, as amended, or any similar estate tax
18 provision, the difference between the total estate tax
19 for which the decedent's estate is liable and the
20 amount of estate tax for which the decedent's estate
21 would have been liable if the property had not been



1 included in the decedent's gross estate shall be
2 apportioned ratably among the holders of interest in
3 the property. The balance of the tax, if any, shall
4 be apportioned ratably to each other person having an
5 interest in the apportionable estate; and

- 6 (4) Except as otherwise provided in section 560:3-C(b) (4)
7 and except as to property to which section 560:3-G
8 applies, an estate tax apportioned to persons holding
9 interests in property subject to a time-limited
10 interest shall be apportioned, without further
11 apportionment, to the principal of that property.

12 **§560:3-E Credits and referrals.** Except as otherwise
13 provided in sections 560:3-F and 560:3-G, the following rules
14 shall apply to credits and deferrals of estate taxes:

- 15 (1) A credit resulting from the payment of gift taxes, or
16 from estate taxes paid on property previously taxed,
17 shall inure ratably to the benefit of all persons to
18 which the estate tax is apportioned;
- 19 (2) A credit for state or foreign estate taxes shall inure
20 ratably to the benefit of all persons to which the
21 estate tax is apportioned; provided that the amount of



1 a credit for a state or foreign tax paid by a
2 beneficiary of the property on which the state or
3 foreign tax was imposed, directly or by a charge
4 against the property, shall inure to the benefit of
5 the beneficiary; and

6 (3) If payment of a portion of an estate tax is deferred
7 because of the inclusion in the gross estate of a
8 particular interest in property, the benefit of the
9 deferral shall inure ratably to the persons to which
10 the estate tax attributable to the interest is
11 apportioned. The burden of any interest charges
12 incurred on a deferral of taxes and the benefit of any
13 tax deduction associated with the accrual or payment
14 of the interest charge shall be allocated ratably
15 among the persons receiving an interest in the
16 property.

17 **§560:3-F Insulated property; advancement of tax.** (a) In
18 this section:

19 "Advanced fraction" means a fraction that has as its
20 numerator the amount of the advanced tax and as its denominator



1 the value of the interests in insulated property to which that
2 tax is attributable.

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

6 "Insulated property" means property subject to a
7 time-limited interest that is included in the apportionable
8 estate but is unavailable for payment of an estate tax because
9 of impossibility or impracticability.

10 "Uninsulated holder" means a person who has an interest in
11 uninsulated property.

12 "Uninsulated property" means property included in the
13 apportionable estate other than insulated property.

14 (b) If an estate tax is to be advanced pursuant to
15 subsection (c) by persons holding interests in uninsulated
16 property subject to a time-limited interest other than property
17 to which section 560:3-G applies, the tax shall be advanced,
18 without further apportionment, from the principal of the
19 uninsulated property.

20 (c) Subject to section 560:3-I(b) and (d), an estate tax
21 attributable to interests in insulated property shall be



1 advanced ratably by uninsulated holders. If the value of an
2 interest in uninsulated property is less than the amount of
3 estate taxes otherwise required to be advanced by the holder of
4 that interest, the deficiency shall be advanced ratably by the
5 persons holding interests in properties that are excluded from
6 the apportionable estate under paragraph (2) of the definition
7 of "apportionable estate" in section 560:3-B as if those
8 interests were in uninsulated property.

9 (d) A court having jurisdiction to determine the
10 apportionment of an estate tax may require a beneficiary of an
11 interest in insulated property to pay all or part of the estate
12 tax otherwise apportioned to the interest if the court finds
13 that it would be substantially more equitable for that
14 beneficiary to bear the tax liability personally than for that
15 part of the tax to be advanced by uninsulated holders.

16 (e) When a distribution of insulated property is made,
17 each uninsulated holder may recover from the distributee a
18 ratable portion of the advanced fraction of the property
19 distributed. To the extent that undistributed insulated
20 property ceases to be insulated, each uninsulated holder may



1 recover from the property a ratable portion of the advanced
2 fraction of the total undistributed property.

3 (f) Upon a distribution of insulated property for which,
4 pursuant to subsection (d), the distributee becomes obligated to
5 make a payment to uninsulated holders, a court may award an
6 uninsulated holder a recordable lien on the distributee's
7 property to secure the distributee's obligation to that
8 uninsulated holder.

9 **§560:3-G Apportionment and recapture of special elective**
10 **benefits.** (a) In this section:

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

- 13 (1) A reduced valuation of specified property that is
14 included in the gross estate;
- 15 (2) A deduction from the gross estate, other than a
16 marital or charitable deduction, allowed for specified
17 property; or
- 18 (3) An exclusion from the gross estate of specified
19 property.

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



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

16 (c) An additional estate tax imposed to recapture all or
17 part of a special elective benefit shall be charged to the
18 persons that are liable for the additional tax under the law
19 providing for the recapture.

20 **§560:3-H Securing payment of estate tax from property in**
21 **possession of fiduciary.** (a) A fiduciary may defer a



1 distribution of property until the fiduciary is satisfied that
2 adequate provision for payment of the estate tax has been made.

3 (b) A fiduciary may withhold from a distributee an amount
4 equal to the amount of estate tax apportioned to an interest of
5 the distributee.

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

9 **§560:3-I Collection of estate tax by fiduciary.** (a) A
10 fiduciary responsible for payment of an estate tax may collect
11 from any person the tax apportioned to and the tax required to
12 be advanced by the person.

13 (b) Except as otherwise provided in section 560:3-F, any
14 estate tax due from a person that cannot be collected from the
15 person may be collected by the fiduciary from other persons in
16 the following order of priority:

- 17 (1) Any person having an interest in the apportionable
18 estate that is not exonerated from the tax;
- 19 (2) Any other person having an interest in the
20 apportionable estate; and
- 21 (3) Any person having an interest in the gross estate.



1 (c) A domiciliary fiduciary may recover from an ancillary
2 personal representative the estate tax apportioned to the
3 property controlled by the ancillary personal representative.

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

6 **§560:3-J Right of reimbursement.** (a) A person required
7 under section 560:3-I to pay an estate tax greater than the
8 amount due from the person under section 560:3-C or 560:3-D
9 shall have a right to reimbursement from another person to the
10 extent that the other person has not paid the tax required by
11 section 560:3-C or 560:3-D and a right to reimbursement ratably
12 from other persons to the extent that each has not contributed a
13 portion of the amount collected under section 560:3-I(b).

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

18 **§560:3-K Action to determine or enforce part.** A
19 fiduciary, transferee, or beneficiary of the gross estate may
20 maintain an action for declaratory judgment to have a court
21 determine and enforce this part.



1 "Record" means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is
3 retrievable in perceivable form.

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

- 6 (1) Execute or adopt a tangible symbol; or
- 7 (2) Attach to or logically associate with the record an
8 electronic symbol, sound, or process."

9 2. By amending the definition of "beneficiary" to read:

10 "Beneficiary", as it relates to a [~~trust beneficiary,~~];

11 (1) "Trust beneficiary", includes a person who has any
12 present or future interest, vested or contingent, and
13 [~~also includes~~] the owner of an interest by assignment
14 or other transfer; [~~as it relates to a charitable~~
15 ~~trust,~~]

16 (2) "Charitable trust", includes any person entitled to
17 enforce the trust; [~~as it relates to a "beneficiary]~~

18 (3) "Beneficiary of a beneficiary designation", refers to
19 a beneficiary of [~~a~~];

20 (A) An insurance or annuity policy[~~, of a~~];

21 (B) An account with POD designation[~~, of a~~];



1 (C) A security registered in beneficiary form (TOD) [~~τ~~
2 ~~or of a~~];

3 (D) A transfer on death deed;

4 (E) A pension, profit-sharing, retirement, or similar
5 benefit plan[~~τ~~]; or

6 (F) Any other nonprobate transfer at death; and[~~τ as~~
7 ~~it relates to a "beneficiary"~~]

8 (4) "Beneficiary designated in a governing instrument",
9 includes a grantee of a deed[~~τ~~]; a devisee[~~τ~~]; a trust
10 beneficiary[~~τ~~]; a beneficiary of a beneficiary
11 designation[~~τ~~]; a donee, appointee, or taker in
12 default of a power of appointment[~~τ~~]; or a person in
13 whose favor a power of attorney or a power held in any
14 individual, fiduciary, or representative capacity is
15 exercised."

16 3. By amending the definition of "issue" to read:

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

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



1 "(a) If notice of a hearing on any petition is required
2 and except for specific notice requirements as otherwise
3 provided, the petitioner shall cause notice of the time and
4 place of hearing of any petition to be given to any interested
5 person or the person's attorney if the person has appeared by
6 attorney or requested that notice be sent to the person's
7 attorney, or, in the case of a minor or an incapacitated person,
8 the minor's or incapacitated person's parent or guardian, as
9 appropriate. Notice shall be given:

10 (1) By mailing a copy thereof at least fourteen days
11 before the time set for the hearing by certified,
12 registered, or ordinary [~~first-class~~] first-class mail
13 addressed to the person being notified at the post
14 office address given in the person's demand for
15 notice, if any, or at the person's office or place of
16 residence, if known;

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

20 (3) If the address or identity of any person is not known
21 and cannot be ascertained with reasonable diligence,



1 by publishing at least once a week for [~~three~~] two
 2 consecutive weeks, a copy thereof in a newspaper
 3 having general circulation in the judicial circuit
 4 where the hearing is to be held, the last publication
 5 of which is to be at least ten days before the time
 6 set for the hearing."

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

9 **"§560:1-403 Pleadings; when parties bound by others;**
 10 **notice.** In formal proceedings involving trusts or estates of
 11 decedents, minors, protected persons, or incapacitated persons,
 12 and in judicially supervised settlements, the following rules
 13 shall apply:

14 (1) Interests to be affected shall be described in
 15 pleadings [~~which~~] that give reasonable information to
 16 owners by name or class, by reference to the
 17 instrument creating the interests, or in [~~either~~]
 18 another appropriate manner;

19 (2) [~~Persons are~~] A person shall be bound by [~~orders~~] an
 20 order binding [~~others~~] another in the following cases:



- 1 (A) Orders binding the sole holder or all co-holders
- 2 of a power of revocation or a presently
- 3 exercisable general power of appointment,
- 4 including one in the form of a power of
- 5 amendment, shall bind other persons to the extent
- 6 their interests (as objects, takers in default,
- 7 or otherwise) are subject to the power;
- 8 (B) To the extent there is no conflict of interest
- 9 between them or among persons represented,
- 10 [~~orders binding a~~] an order binding:
- 11 (i) A conservator shall bind the person whose
- 12 estate the conservator controls; [~~orders~~
- 13 ~~binding a~~]
- 14 (ii) A guardian shall bind the ward if no
- 15 conservator of the ward's estate has been
- 16 appointed; [~~orders binding a~~]
- 17 (iii) A trustee shall bind beneficiaries of the
- 18 trust in proceedings to probate a will
- 19 establishing or adding to a trust, to review
- 20 the acts or accounts of a [~~prior~~] former
- 21 fiduciary, and in proceedings involving



1 creditors or other third parties; [~~and~~
2 ~~orders binding a]~~

3 (iv) A personal representative shall bind persons
4 interested in the undistributed assets of a
5 decedent's estate in actions or proceedings
6 by or against the estate[~~. If there is no~~
7 ~~conflict of interest and no conservator or~~
8 ~~guardian has been appointed, a parent may~~
9 ~~represent the parent's minor child]; and~~

10 (v) A sole holder or all co-holders of a general
11 testamentary power of appointment shall bind
12 other persons to the extent their interests
13 as objects, takers in default, or otherwise
14 are subject to the power; and

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

- 1 (3) If no conservator or guardian has been appointed, a
2 parent may represent a minor child;
- 3 [~~3~~] (4) Notice is required as follows:
- 4 (A) [~~Notice~~] The notice as prescribed by section
5 560:1-401 shall be given to every interested
6 person or to one who can bind an interested
7 person as described in paragraph (2) (A) or
8 (2) (B). Notice may be given both to a person and
9 to another who may bind the person; and
- 10 (B) Notice is given to unborn or unascertained
11 persons[~~7~~] who are not represented under
12 paragraph (2) (A) or (2) (B) [~~7~~] by giving notice to
13 all known persons whose interests in the
14 proceedings are substantially identical to those
15 of the unborn or unascertained persons; and
- 16 [~~4~~] (5) At any point in a proceeding, a court may appoint
17 a guardian ad litem to represent the interest of a
18 minor, an incapacitated, unborn, or unascertained
19 person, or a person whose identity or address is
20 unknown, if the court determines that representation
21 of the interest otherwise would be inadequate. If not



1 precluded by conflict of interests, a guardian ad
2 litem may be appointed to represent several persons or
3 interests. The court shall set out its reasons for
4 appointing a guardian ad litem as a part of the record
5 of the proceeding."

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

8 **"§560:2-102 Share of spouse or reciprocal beneficiary.**

9 The intestate share of a decedent's surviving spouse or
10 reciprocal beneficiary [~~is~~] shall be:

11 (1) The entire intestate estate if:

12 (A) No descendant or parent of the decedent survives
13 the decedent; or

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

19 (2) The first [~~\$200,000,~~] \$400,000, plus three-fourths of
20 any balance of the intestate estate, if no descendant



1 of the decedent survives the decedent, but a parent of
2 the decedent survives the decedent;

3 (3) The first [~~\$150,000,~~] \$330,000, plus one-half of any
4 balance of the intestate estate, if all of the
5 decedent's surviving descendants are also descendants
6 of the surviving spouse or reciprocal beneficiary and
7 the surviving spouse or reciprocal beneficiary has one
8 or more surviving descendants who are not descendants
9 of the decedent; or

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

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

16 **"§560:2-103 Share of heirs other than surviving spouse or**
17 **reciprocal beneficiary. (a) Definitions. In this section:**
18 "Deceased parent", "deceased grandparent", "deceased
19 spouse", or "deceased reciprocal beneficiary" means a parent,
20 grandparent, spouse, or reciprocal beneficiary, as applicable,

1 who either predeceased the decedent or is deemed under this
2 article to have predeceased the decedent.

3 "Surviving parent", "surviving grandparent", "surviving
4 spouse", "surviving reciprocal beneficiary", or "surviving
5 descendant" means a parent, grandparent, spouse, reciprocal
6 beneficiary, or descendant who neither predeceased the decedent
7 nor is deemed under this article to have predeceased the
8 decedent.

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

- 16 ~~(1) To the decedent's descendants by representation;~~
17 ~~(2) If there is no surviving descendant, to the decedent's~~
18 ~~parents equally if both survive, or to the surviving~~
19 ~~parent; provided, however, if the decedent is a minor,~~
20 ~~and if it is shown by clear and convincing evidence~~
21 ~~that any parent has:~~



1 ~~(A) Deserted the child without affording means of~~
2 ~~identification for a period of at least ninety~~
3 ~~days;~~

4 ~~(B) Failed to communicate with the child when able to~~
5 ~~do so for a period of at least one year when the~~
6 ~~child is in the custody of another; or~~

7 ~~(C) Failed to provide for care and support of the~~
8 ~~child when able to do so for a period of at least~~
9 ~~one year when the child is in the custody of~~
10 ~~another despite a child support order requiring~~
11 ~~such support;~~

12 ~~such parent shall be deemed to have predeceased the~~
13 ~~decedent;~~

14 ~~(3) If there is no surviving descendant or parent entitled~~
15 ~~to inherit, to the descendants of the decedent's~~
16 ~~parents or either of them by representation; and~~

17 ~~(4) If there is no surviving descendant, parent entitled~~
18 ~~to take, or descendant of a parent, but the decedent~~
19 ~~is survived by one or more grandparents or descendants~~
20 ~~of grandparents, half of the estate passes to the~~
21 ~~decedent's paternal grandparents equally if both~~



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

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

16 (c) Surviving descendant. If a decedent is survived by
17 one or more descendants, any part of the intestate estate not
18 passed to the surviving spouse or reciprocal beneficiary shall
19 pass by representation to the decedent's surviving descendants.

20 (d) Surviving parent. If a decedent is not survived by a
21 descendant but is survived by one or more parents, any part of



1 the intestate share not passing to the surviving spouse or
2 reciprocal beneficiary shall be distributed as follows:

3 (1) The intestate estate or part thereof shall be divided
4 into as many equal shares as there are:

5 (A) Surviving parents; and

6 (B) Deceased parents with one or more surviving
7 descendants, if any, as determined under
8 subsection (e);

9 (2) One share shall pass to each surviving parent;
10 provided that if the decedent is a minor, and if it is
11 shown by clear and convincing evidence that any parent
12 has:

13 (A) Deserted the minor without affording means of
14 identification for a period of at least ninety
15 days;

16 (B) Failed to communicate with the minor when able to
17 do so for a period of at least one year when the
18 minor is in the custody of another; or

19 (C) Failed to provide for care and support of the
20 minor when able to do so for a period of at least
21 one year when the minor is in the custody of



1 another, despite an order requiring child
2 support,
3 the parent shall be deemed to have predeceased the
4 decedent; and

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

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

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

18 (2) If two or more deceased parents have the same
19 surviving descendants and none of those deceased
20 parents has any other surviving descendants, those



1 deceased parents shall be deemed to be one deceased
2 parent with surviving descendants.

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

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

12 (1) The intestate estate shall be divided into as many
13 equal shares as there are:

14 (A) Surviving grandparents; and

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

18 (2) One share shall pass to each surviving grandparent;
19 and

20 (3) The balance of the intestate estate, if any, shall
21 pass by representation to the surviving descendants of



1 the decedent's deceased grandparents, as determined
2 under subsection (h).

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

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

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

17 (i) Surviving descendant of deceased grandparent. If a
18 decedent is not survived by a descendant, parent, descendant of
19 a parent, or grandparent but is survived by one or more
20 descendants of a grandparent, the intestate estate shall pass by



1 representation to the surviving descendants of the decedent's
2 deceased grandparents.

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

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

12 "**§560:2-104 Requirement [~~that heir survive decedent for~~**
13 **of survival by one hundred twenty hours[-]; gestational period;**
14 **pregnancy after decedent's death.** (a) In this section,
15 "gestational period" means the time between the start of a
16 pregnancy and birth.

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

20 (1) An individual born before a decedent's death who fails
21 to survive the decedent by one hundred twenty hours



1 [is] shall be deemed to have predeceased the decedent
2 ~~[for purposes of homestead allowance, exempt property,~~
3 ~~and intestate succession, and the decedent's heirs are~~
4 ~~determined accordingly]~~. If it is not established by
5 clear and convincing evidence that an individual ~~[who~~
6 ~~would otherwise be an heir]~~ born before a decedent's
7 death survived the decedent by one hundred twenty
8 hours, it [is] shall be deemed that the individual
9 failed to survive for the required period~~[-]~~;

10 (2) An individual in gestation at the decedent's death
11 shall be deemed to be living at the decedent's death
12 if the individual lives one hundred twenty hours after
13 birth. If it is not established by clear and
14 convincing evidence that an individual in gestation at
15 the decedent's death lived one hundred twenty hours
16 after birth, it shall be deemed that the individual
17 failed to survive for the required period; and

18 (3) If the decedent dies before the start of a pregnancy
19 by assisted reproduction resulting in the birth of an
20 individual who lives at least one hundred twenty hours
21 after birth, that individual shall be deemed to be



1 living at the decedent's death if the decedent's
2 personal representative, no later than six months
3 after the decedent's death, received notice or had
4 actual knowledge of an intent to use genetic material
5 in the assisted reproduction and:

6 (A) The embryo was in utero no later than thirty-six
7 months after the decedent's death; or

8 (B) The individual was born no later than forty-five
9 months after the decedent's death.

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

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

15 "**§560:2-106 Representation.** (a) Definitions. In this
16 section:

17 "Deceased descendant", "deceased parent", [~~or~~] "deceased
18 grandparent", "deceased spouse", or "deceased reciprocal
19 beneficiary" means a descendant, parent, [~~or~~] grandparent,
20 spouse, or reciprocal beneficiary who either predeceased the



1 decedent or is deemed to have predeceased the decedent under
2 section 560:2-104.

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

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

11 (1) Surviving descendants in the generation nearest to the
12 decedent [~~which~~] that contains one or more surviving
13 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~~] shall
17 be allocated one share. The remaining shares, if any, [~~are~~]
18 shall be combined and then divided in the same manner among the
19 surviving descendants of the deceased descendants as if the
20 surviving descendants who were allocated a share and their
21 surviving descendants had predeceased the decedent.



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

- 8 ~~(1) Surviving descendants in the generation nearest the~~
9 ~~deceased parents or either of them, or the deceased~~
10 ~~grandparents or either of them, that contains one or~~
11 ~~more surviving descendants; and~~
- 12 ~~(2) Deceased descendants in the same generation who left~~
13 ~~surviving descendants, if any.~~

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

20 (c) Descendants of parent when parent survives. If a
21 decedent is survived by one or more parents and, under section



1 560:2-103(d) and (e), the balance of the decedent's intestate
2 estate or part thereof passes by representation to the surviving
3 descendants of one or more of the decedent's deceased parents,
4 the balance shall pass to those descendants as if they were the
5 decedent's surviving descendants under subsection (b).

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

13 (e) Descendants of grandparent when grandparent survives.
14 If a decedent is survived by one or more grandparents and, under
15 section 560:2-103(g) and (h), the balance of the decedent's
16 intestate estate passes by representation to the surviving
17 descendants of one or more of the decedent's deceased
18 grandparents, the balance shall pass to those descendants as if
19 they were the decedent's surviving descendants under subsection
20 (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 shall pass 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 shall pass to those descendants as if they were
15 the 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. — Relatives of the half~~
19 ~~blood inherit the same share they would inherit if they were of~~
20 ~~the whole blood.] Inheritance without regard to number of common~~
21 ~~ancestors in the same generation. An heir shall inherit without~~



1 regard to how many common ancestors in the same generation the
2 heir shares with the decedent."

3 SECTION 14. Section 560:2-113, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§560:2-113 Individuals related to decedent through [~~two~~**
6 **~~lines.] more than one line.~~** An individual who is related to the
7 decedent through [~~two lines]~~ more than one line of relationship
8 [~~is]~~ shall be entitled to only a single share based on [~~the]~~ one
9 line of relationship [~~that would entitle the individual to the~~
10 ~~larger share]~~. If the shares from the lines of relationship are
11 unequal, the individual shall be entitled to the largest share.
12 The individual and the individual's descendants shall be deemed
13 to have predeceased the decedent with respect to the other line
14 or lines of relationship."

15 SECTION 15. Section 560:2-114, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§560:2-114 Parent [~~and child relationship.~~** ~~(a) Except~~
18 ~~as provided in subsections (b) and (c), for purposes of~~
19 ~~intestate succession by, through, or from a person, an~~
20 ~~individual is the child of the child's natural parents,~~



1 ~~regardless of their marital status. The parent and child~~
2 ~~relationship may be established under chapter 584.~~

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

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

8 ~~(A) The relationship between the child and that~~
9 ~~natural parent; or~~

10 ~~(B) The right of the child or a descendant of the~~
11 ~~child to inherit from or through the other~~
12 ~~natural parent; and~~

13 ~~(2) Adoption of a child during such child's minority by~~
14 ~~the spouse or reciprocal beneficiary of a natural~~
15 ~~parent of the child, by a natural grandparent, aunt,~~
16 ~~uncle, or sibling of the child or the spouse or~~
17 ~~reciprocal beneficiary of a natural grandparent, aunt,~~
18 ~~uncle, or sibling of the child has no effect on the~~
19 ~~relationship between the child and either natural~~
20 ~~parent, for the limited purpose of interpretation or~~
21 ~~construction of a disposition in any will, trust, or~~



1 ~~other lifetime instrument, whether executed before or~~
2 ~~after the order of adoption, and for the purposes of~~
3 ~~determining the heirs at law of a natural family~~
4 ~~member of the child.~~

5 ~~(e) Inheritance from or through a child by either natural~~
6 ~~parent or the parent's kindred is precluded unless that natural~~
7 ~~parent has openly treated the child as the natural parent's, and~~
8 ~~has not refused to support the child.~~

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

13 (a) A parent shall be barred from inheriting from or
14 through a child of the parent if:

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

18 (2) The child died before reaching eighteen years of age
19 and there is clear and convincing evidence that
20 immediately before the child's death, the parental
21 rights of the parent could have been terminated under



1 the laws of this State, other than this chapter, on
2 the basis of nonsupport, abandonment, abuse, neglect,
3 or other actions or inactions of the parent toward the
4 child.

5 (b) For the purpose of intestate succession from or
6 through the deceased child, a parent who is barred from
7 inheriting under this section shall be treated as if the parent
8 predeceased the child.

9 (c) Except as otherwise provided in section 560:2-E(b),
10 the termination of a parent's parental rights to a child shall
11 have no effect on the right of the child or a descendant of the
12 child to inherit from or through the parent."

13 SECTION 16. Section 560:2-202, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) Elective-share amount. The surviving spouse or
16 reciprocal beneficiary of a decedent who dies domiciled in this
17 State [~~has~~] shall have a right of election, under the
18 limitations and conditions stated in this part, to take an
19 elective-share amount equal to [~~the value of the elective-share~~
20 ~~percentage~~] fifty per cent of the value of the marital-property
21 portion of the augmented estate [~~, determined by the length of~~



1 ~~time the spouse and the decedent were married to each other, or~~
2 ~~the reciprocal beneficiary and the decedent were in a reciprocal~~
3 ~~beneficiary relationship, in accordance with the following~~
4 ~~schedule:~~

5
6 ~~If the decedent and the~~
7 ~~spouse were married to~~
8 ~~each other, or the~~
9 ~~decedent and the reciprocal~~
10 ~~beneficiary were in a~~
11 ~~relationship:~~

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

13 Less than 1 year	Supplemental amount only.
14 1 year but less than 2 years	3% of the augmented estate.
15 2 years but less than 3 years	6% of the augmented estate.
16 3 years but less than 4 years	9% of the augmented estate.
17 4 years but less than 5 years	12% of the augmented estate.
18 5 years but less than 6 years	15% of the augmented estate.
19 6 years but less than 7 years	18% of the augmented estate.
20 7 years but less than 8 years	21% of the augmented estate.
21 8 years but less than 9 years	24% of the augmented estate.



1	9 years but less than 10 years	27% of the augmented estate.
2	10 years but less than 11 years	30% of the augmented estate.
3	11 years but less than 12 years	34% of the augmented estate.
4	12 years but less than 13 years	38% of the augmented estate.
5	13 years but less than 14 years	42% of the augmented estate.
6	14 years but less than 15 years	46% of the augmented estate.
7	15 years or more	50% of the augmented estate;

8 ~~provided, however, the surviving spouse or reciprocal~~
9 ~~beneficiary may elect to take a share smaller than that to which~~
10 ~~the surviving spouse or reciprocal beneficiary is entitled~~
11 ~~hereunder].~~

12 (b) Supplemental elective-share amount. If the sum of the
13 amounts described in sections 560:2-207, 560:2-209(a)(1), and
14 that part of the elective-share amount payable from the
15 decedent's net probate estate and nonprobate transfers to others
16 under section [~~560:2-209(b) and (e)~~] 560:2-209(c) and (d) is
17 less than [~~\$50,000,~~] \$90,000, the surviving spouse or reciprocal
18 beneficiary [~~is~~] shall be entitled to a supplemental elective-
19 share amount equal to [~~\$50,000~~] \$90,000 minus the sum of the
20 amounts described in those sections. The supplemental elective-
21 share amount [~~is~~] shall be payable from the decedent's net



1 probate estate and from recipients of the decedent's nonprobate
 2 transfers to others in the order of priority set forth in
 3 section [~~560:2-209(b) and (e).~~] 560:2-209(c) and (d)."

4 SECTION 17. Section 560:2-203, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 "**§560:2-203 Composition of the augmented estate.** (a)

7 Subject to section 560:2-208, the value of the augmented estate,
 8 to the extent provided in sections 560:2-204, 560:2-205,
 9 560:2-206, and 560:2-207, [~~consists~~] shall consist of the sum of
 10 the values of all property, whether real or personal[~~+~~], movable
 11 or immovable, tangible or intangible, wherever situated, that
 12 constitute the [~~decedent's~~]:

- 13 (1) Decedent's net probate estate[~~, the decedent's~~];
 14 (2) Decedent's nonprobate transfers to others[~~, the~~
 15 ~~decedent's~~];
 16 (3) Decedent's nonprobate transfers to the surviving
 17 spouse or reciprocal beneficiary[~~, and the surviving~~];
 18 and
 19 (4) Surviving spouse's property or reciprocal
 20 beneficiary's property and nonprobate transfers to
 21 others.



1 (b) The value of the marital-property portion of the
 2 augmented estate shall consist of the sum of the values of the
 3 four components of the augmented estate as determined under
 4 subsection (a) multiplied by the following percentage:

5	<u>Less than 1 year.....</u>	<u>3%</u>
6	<u>1 year but less than 2 years.....</u>	<u>6%</u>
7	<u>2 years but less than 3 years.....</u>	<u>12%</u>
8	<u>3 years but less than 4 years.....</u>	<u>18%</u>
9	<u>4 years but less than 5 years.....</u>	<u>24%</u>
10	<u>5 years but less than 6 years.....</u>	<u>30%</u>
11	<u>6 years but less than 7 years.....</u>	<u>36%</u>
12	<u>7 years but less than 8 years.....</u>	<u>42%</u>
13	<u>8 years but less than 9 years.....</u>	<u>54%</u>
14	<u>9 years but less than 10 years.....</u>	<u>60%</u>
15	<u>10 years but less than 11 years.....</u>	<u>68%</u>
16	<u>11 years but less than 12 years.....</u>	<u>76%</u>
17	<u>12 years but less than 13 years.....</u>	<u>84%</u>
18	<u>13 years but less than 14 years.....</u>	<u>92%</u>
19	<u>14 years but less than 15 years.....</u>	<u>96%</u>
20	<u>15 years or more.....</u>	<u>100%."</u>



1 SECTION 18. Section 560:2-205, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§560:2-205 Decedent's nonprobate transfers to others.**

4 The value of the augmented estate [~~includes~~] shall include the
5 value of the decedent's nonprobate transfers to others, not
6 included under section 560:2-204, of any of the following types,
7 in the amount provided respectively for each type of transfer:

8 (1) Property owned or owned in substance by the decedent
9 immediately before death that passed outside probate
10 at the decedent's death. Probate included under this
11 category [~~consists~~] shall consist of:

12 (A) Property over which the decedent alone,
13 immediately before death, held a presently
14 exercisable general power of appointment. The
15 amount included [~~is~~] shall be the value of the
16 property subject to the power, to the extent the
17 property passed at the decedent's death, by
18 exercise, release, lapse, [~~in~~] default, or
19 otherwise, to or for the benefit of any person
20 other than the decedent's estate or surviving
21 spouse or reciprocal beneficiary;



1 (B) The decedent's fractional interest in property
2 held by the decedent in joint tenancy with the
3 right of survivorship. The amount included [~~is~~]
4 shall be the value of the decedent's fractional
5 interest, to the extent the fractional interest
6 passed by right of survivorship at the decedent's
7 death to a surviving joint tenant other than the
8 decedent's surviving spouse or reciprocal
9 beneficiary;

10 (C) The decedent's ownership interest in property or
11 accounts held in POD, TOD, or co-ownership
12 registration with the right of survivorship. The
13 amount included [~~is~~] shall be the value of the
14 decedent's ownership interest, to the extent the
15 decedent's ownership interest passed at the
16 decedent's death to or for the benefit of any
17 person other than the decedent's estate or
18 surviving spouse or reciprocal beneficiary. As
19 used herein, "ownership interest" is determined
20 by dividing:



1 (i) [~~the~~] The sum of all the decedent's deposits
 2 to the account, including deposit life
 3 insurance proceeds added to the account on
 4 account of the decedent's death, less all
 5 withdrawals made by or for the benefit of
 6 the decedent[~~r~~]; by

7 (ii) [~~the~~] The sum of all deposits to the
 8 account; and

9 (D) Proceeds of insurance, including accidental death
 10 benefits, on the life of the decedent, if the
 11 decedent owned the insurance policy immediately
 12 before death or if and to the extent the decedent
 13 alone and immediately before death held a
 14 presently exercisable general power of
 15 appointment over the policy or its proceeds. The
 16 amount included [~~is~~] shall be the value of the
 17 proceeds, to the extent they were payable at the
 18 decedent's death to or for the benefit of any
 19 person other than the decedent's estate or
 20 surviving spouse or 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~~] shall be the value of the
9 fraction of the property to which the decedent's
10 right 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



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



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

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



1 this subparagraph, "termination", with respect to
2 a ~~[right]~~:

3 (i) Right or interest in property, occurs when
4 the right or interest terminated by the
5 terms of the governing instrument or the
6 decedent transferred or relinquished the
7 right or interest~~[,]~~; and~~[, with respect to~~
8 ~~a power]~~

9 (ii) Power over property, occurs when the power
10 terminated by exercise, release, lapse,
11 default, or otherwise~~[, but,]~~;

12 provided that with respect to a power described
13 in paragraph (1) (A), "termination" occurs when
14 the power terminated by exercise or release, but
15 not otherwise;

16 (B) Any transfer of or relating to an insurance
17 policy on the life of the decedent if the
18 proceeds would have been included in the
19 augmented estate under paragraph (1) (D) had the
20 transfer not occurred. The amount included ~~[is]~~
21 shall be the value of the insurance proceeds to



1 the extent the proceeds were payable at the
2 decedent's death to or for the benefit of any
3 person other than the decedent's estate or
4 surviving spouse or reciprocal beneficiary; or
5 (C) Any transfer of property, to the extent not
6 otherwise included in the augmented estate, made
7 to or for the benefit of a person other than the
8 decedent's surviving spouse or reciprocal
9 beneficiary. The amount included [~~is~~] shall be
10 the value of the transferred property to the
11 extent the aggregate transfers to any one donee
12 in either of the two years exceeded [~~\$20,000-~~]
13 \$32,000."

14 SECTION 19. Section 560:2-209, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§560:2-209 Sources from which elective share payable.**

17 (a) Elective-share amount only. In a proceeding for an
18 elective share, the following [~~are~~] shall be applied first to
19 satisfy the elective-share amount and to reduce or eliminate any
20 contributions due from the decedent's probate estate and
21 recipients of the decedent's nonprobate transfers to others:



- 1 (1) Amounts included in the augmented estate under section
2 560:2-204 [~~which~~] that pass or have passed to the
3 surviving spouse or reciprocal beneficiary by testate
4 or intestate succession and amounts included in the
5 augmented estate under section 560:2-206; and
- 6 (2) [~~Amounts~~] The marital-property portion of amounts
7 included in the augmented estate under section
8 560:2-207 [~~up to the applicable percentage thereof.~~
9 ~~For the purposes of this subsection, the "applicable~~
10 ~~percentage" is twice the elective share percentage set~~
11 ~~forth in the schedule in section 560:2-202(a)~~
12 ~~appropriate to the length of time:~~
- 13 ~~(A) The spouse and the decedent were married to each~~
14 ~~other; or~~
- 15 ~~(B) The reciprocal beneficiary and the decedent were~~
16 ~~in a reciprocal beneficiary relationship].~~
- 17 (b) The marital-property portion under subsection (a) (2)
18 shall be computed by multiplying the value of the amounts
19 included in the augmented estate under section 560:2-207 by the
20 percentage of the augmented estate set forth in the schedule in



1 section 560:2-203(b), appropriate to the length of the marriage
2 or the reciprocal beneficiary relationship.

3 ~~[(b)]~~ (c) If, after the application of subsection (a), the
4 elective-share amount is not fully satisfied or the surviving
5 spouse or reciprocal beneficiary is entitled to a supplemental
6 elective-share amount, amounts included in the decedent's
7 probate estate, other than assets passing to the surviving
8 spouse or reciprocal beneficiary by testate or intestate
9 succession, and in the decedent's nonprobate transfers to
10 others [~~, other than amounts included~~] under section
11 [~~560:2-205(3)(A) or (C), are~~] 560:2-205(1), (2), and (3)(B),
12 shall be applied first to satisfy the unsatisfied balance of the
13 elective-share amount or the supplemental elective-share amount.
14 The decedent's probate estate and that portion of the decedent's
15 nonprobate transfers to others [~~are so~~] shall be applied so that
16 liability for the unsatisfied balance of the elective-share
17 amount or for the supplemental elective-share amount is
18 equitably apportioned among the recipients of the decedent's
19 probate estate and of that portion of the decedent's nonprobate
20 transfers to others in proportion to the value of their
21 interests therein.



1 [~~(e)~~] (d) If, after the application of subsections (a) and
2 [~~(b)7~~] (c), the elective-share or supplemental elective-share
3 amount is not fully satisfied, the remaining portion of the
4 decedent's nonprobate transfers to others [~~is so~~] shall be
5 applied so that liability for the unsatisfied balance of the
6 elective-share or supplemental elective-share amount is
7 equitably apportioned among the recipients of the remaining
8 portion of the decedent's nonprobate transfers to others in
9 proportion to the value of their interests therein.

10 (e) The unsatisfied balance of the elective-share or
11 supplemental elective-share amount as determined under
12 subsection (c) or (d) shall be treated as a general pecuniary
13 devise for purposes of section 560:3-904."

14 SECTION 20. Section 560:2-212, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Incapacitated surviving spouse or reciprocal
17 beneficiary. If the election is exercised on behalf of a
18 surviving spouse or reciprocal beneficiary who is an
19 incapacitated person, that portion of the elective-share and
20 supplemental elective-share amounts due from the decedent's
21 probate estate and recipients of the decedent's nonprobate



1 transfers to others under section [~~560:2-209(b) and (c) must~~]
2 560:2-209(c) and (d) shall be placed in a custodial trust for
3 the benefit of the surviving spouse or reciprocal beneficiary
4 under chapter 554B, except as modified below. For the purposes
5 of this subsection, an election on behalf of a surviving spouse
6 or reciprocal beneficiary by an agent under a durable power of
7 attorney [~~is~~] shall be presumed to be on behalf of a surviving
8 spouse or reciprocal beneficiary who is an incapacitated person.
9 For purposes of the custodial trust established by this
10 subsection:

- 11 (1) The electing guardian, conservator, or agent [~~is~~]
12 shall be the custodial trustee;
- 13 (2) The surviving spouse or reciprocal beneficiary [~~is~~]
14 shall be the beneficiary; and
- 15 (3) The custodial trust [~~is~~] shall be deemed to have been
16 created by the decedent spouse or reciprocal
17 beneficiary by written transfer that takes effect at
18 the decedent spouse's or reciprocal beneficiary's
19 death and that directs the custodial trustee to
20 administer the custodial trust as one created for the
21 benefit of an incapacitated beneficiary."



1 SECTION 21. Section 560:2-302, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Except as provided in subsection (b), if a testator
4 fails to provide in the testator's will for any of the
5 testator's children born or adopted after the execution of the
6 will, the omitted after-born or after-adopted child [~~receives~~]
7 shall receive a share in the estate as follows:

8 (1) If the testator had no child living when the testator
9 executed the will, an omitted after-born or after-
10 adopted child [~~receives~~] shall receive a share in the
11 estate equal in value to that which the child would
12 have received had the testator died intestate, unless
13 the will devised all or substantially all of the
14 estate to [~~the other~~] another parent of the omitted
15 child and that [~~other~~] parent survives the testator
16 and is entitled to take under the will; and

17 (2) If the testator had one or more children living when
18 the testator executed the will, and the will devised
19 property or an interest in property to one or more of
20 the then-living children, an omitted after-born or



1 after-adopted child [~~is~~] shall be entitled to share in
2 the testator's estate as follows:

3 (A) The portion of the testator's estate in which the
4 omitted after-born or after-adopted child is
5 entitled to share [~~is~~] shall be limited to
6 devises made to the testator's then-living
7 children under the will;

8 (B) The omitted after-born or after-adopted child
9 [~~is~~] shall be entitled to receive the share of
10 the testator's estate, as limited in subparagraph
11 (A), that the child would have received had the
12 testator included all omitted after-born and
13 after-adopted children with the children to whom
14 devises were made under the will and had given an
15 equal share of the estate to each child;

16 (C) To the extent feasible, the interest granted to
17 an omitted after-born or after-adopted child
18 under this section [~~must~~] shall be of the same
19 character, whether equitable or legal, present or
20 future, as that devised to the testator's then-
21 living children under the will; and



1 (D) In satisfying a share provided by this paragraph,
2 devises to the testator's children who were
3 living when the will was executed shall abate
4 ratably. In abating the devises of the then-
5 living children, the court shall preserve to the
6 maximum extent possible the character of the
7 testamentary plan adopted by the testator."

8 SECTION 22. Section 560:2-402, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§560:2-402 Homestead allowance.** A decedent's surviving
11 spouse or reciprocal beneficiary [~~is~~] shall be entitled to a
12 homestead allowance of [~~\$15,000.~~] \$30,000. If there is no
13 surviving spouse or reciprocal beneficiary, each minor child and
14 each dependent child of the decedent [~~is~~] shall be entitled to a
15 homestead allowance amounting to [~~\$15,000~~] \$30,000 divided by
16 the number of minor and dependent children of the decedent. The
17 homestead allowance [~~is~~] shall be exempt from and has priority
18 over all claims against the estate. [~~Homestead~~] The homestead
19 allowance [~~is~~] shall be in addition to any share passing to the
20 surviving spouse or reciprocal beneficiary or minor or dependent



1 child by the will of the decedent, unless otherwise provided, by
2 intestate succession, or by way of elective share."

3 SECTION 23. Section 560:2-403, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§560:2-403 Exempt property.** In addition to the homestead
6 allowance, the decedent's surviving spouse or reciprocal
7 beneficiary [~~is~~] shall be entitled from the estate to a value,
8 not exceeding [~~\$10,000~~] \$20,000 in excess of any security
9 interests therein, in household furniture, automobiles,
10 furnishings, appliances, and personal effects. If there is no
11 surviving spouse or reciprocal beneficiary, the decedent's
12 children [~~are~~] shall be entitled jointly to the same value. If
13 encumbered chattels are selected and the value in excess of
14 security interests, plus that of other exempt property, is less
15 than [~~\$10,000~~] \$20,000 or if there is not [~~\$10,000~~] \$20,000
16 worth of exempt property in the estate, the spouse, reciprocal
17 beneficiary, or children [~~are~~] shall be entitled to other assets
18 of the estate, if any, to the extent necessary to make up the
19 [~~\$10,000~~] \$20,000 value. Rights to exempt property and assets
20 needed to make up a deficiency of exempt property shall have
21 priority over all claims against the estate, but the right to



1 any assets to make up a deficiency of exempt property [~~abates~~]
2 shall abate as necessary to permit earlier payment of homestead
3 allowance and family allowance. These rights [~~are~~] shall be in
4 addition to any benefit or share passing to the surviving
5 spouse, reciprocal beneficiary, or children by the decedent's
6 will, unless otherwise provided, by intestate succession, or by
7 way of elective share."

8 SECTION 24. Section 560:2-405, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) If the estate is otherwise sufficient, property
11 specifically devised [~~may~~] shall not be used to satisfy rights
12 to homestead allowance or exempt property. Subject to this
13 restriction, the surviving spouse or reciprocal beneficiary,
14 guardians of minor children, or children who are adults may
15 select property of the estate as homestead allowance and exempt
16 property. The personal representative may make those selections
17 if the surviving spouse or reciprocal beneficiary, [~~the~~
18 ~~children, or the~~] guardians of the minor children, or adult
19 children are unable or fail to do so within a reasonable time or
20 there is no guardian of a minor child. The personal
21 representative may execute an instrument or deed of distribution



1 to establish the ownership of property taken as homestead
2 allowance or exempt property. The personal representative may
3 determine the family allowance in a lump sum not exceeding
4 [~~\$18,000~~] \$36,000 or periodic installments not exceeding
5 [~~\$1,500~~] \$3,000 per month for one year, and may disburse funds
6 of the estate in payment of the family allowance and any part of
7 the homestead allowance payable in cash. The personal
8 representative or an interested person aggrieved by any
9 selection, determination, payment, proposed payment, or failure
10 to act under this section may petition the court for appropriate
11 relief, which may include a family allowance other than that
12 which the personal representative determined or could have
13 determined."

14 SECTION 25. Section 560:2-514, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§560:2-514 Contracts concerning succession.** A contract
17 to make a will or devise, or not to revoke a will or devise, or
18 to die intestate, if executed after January 1, 1997, may be
19 established only by:

20 (1) Provisions of a will stating material provisions of
21 the contract;



1 (2) An express reference in a will to a contract and
2 extrinsic evidence proving the terms of the contract;
3 or

4 (3) A writing [~~signed by the decedent~~] evidencing the
5 contract[-] and signed by the party alleged to have
6 breached the contract.

7 The execution of a joint will or mutual wills [~~does~~] shall
8 not create a presumption of a contract not to revoke the will or
9 wills."

10 SECTION 26. Section 560:2-603, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Substitute gift. If a devisee fails to survive the
13 testator and is a grandparent, a descendant of a grandparent, or
14 a stepchild of either the testator or the donor of a power of
15 appointment exercised by the testator's will, the following
16 shall apply:

17 (1) Except as provided in paragraph (4), if the devise is
18 not in the form of a class gift and the deceased
19 devisee leaves surviving descendants, a substitute
20 gift [~~is~~] shall be deemed to be created in the
21 devisee's surviving descendants. [~~They~~] The devisee's



1 surviving descendants shall take by representation the
2 property to which the devisee would have been entitled
3 had the devisee survived the testator;

- 4 (2) Except as provided in paragraph (4), if the devise is
5 in the form of a class gift, other than a devise to
6 "issue", "descendants", "heirs of the body", "heirs",
7 "next of kin", "relatives", or "family", or a class
8 described by language of similar import, a substitute
9 gift [~~is~~] shall be deemed to be created in the
10 surviving descendants of any deceased devisee. The
11 property to which the devisees would have been
12 entitled had all of them survived the testator
13 [~~passes~~] shall pass to the surviving devisees and the
14 surviving descendants of the deceased devisees. Each
15 surviving devisee [~~takes~~] shall take the share to
16 which [~~he or she~~] the surviving devisee would have
17 been entitled had the deceased devisees survived the
18 testator. Each deceased devisee's surviving
19 descendants who are substituted for the deceased
20 devisee shall take by representation the share to
21 which the deceased devisee would have been entitled



1 had the deceased devisee survived the testator. For
2 the purposes of this paragraph, "deceased devisee"
3 means a class member who failed to survive the
4 testator and left one or more surviving descendants;

5 (3) For the purposes of section 560:2-601, words of
6 survivorship, such as in a devise to an individual "if
7 he survives me", or in a devise to "my surviving
8 children", [~~are~~] shall not, in the absence of
9 additional evidence, be a sufficient indication of an
10 intent contrary to the application of this section;

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

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

19 (B) The alternate devise is not in the form of a
20 class gift and the expressly designated devisee



1 of the alternative devise is entitled to take
2 under the will;

3 (5) Unless the language creating a power of appointment
4 expressly excludes the substitution of the descendants
5 of an appointee for the appointee, a surviving
6 descendant of a deceased appointee of a power of
7 appointment ~~[can]~~ may be substituted for the appointee
8 under this section, regardless of whether ~~[or not]~~ the
9 descendant is an object of the power~~[-]~~; and

10 (6) In this subsection:

11 "Descendant of a grandparent" means an individual
12 who qualifies as a descendent of a grandparent of the
13 testator or of the donor of a power of appointment
14 under the:

15 (A) Rules of construction applicable to a class gift;
16 or

17 (B) Rules for intestate succession if the devise of
18 exercise of the power is not in the form of a
19 class gift.

20 "Surviving descendants of a deceased devisee"
21 means the descendants of a deceased devisee or class



1 member who would take under a class gift created in
2 the testator's will."

3 SECTION 27. Section 560:2-606, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A specific devisee [~~has~~] shall have a right to the
6 specifically devised property in the testator's estate at death
7 and:

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

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

13 (3) Any proceeds unpaid at death on fire or casualty
14 insurance on or other recovery for injury to the
15 property; [~~and~~]

16 (4) Property owned by the testator at death and acquired
17 as a result of foreclosure, or obtained in lieu of
18 foreclosure, of the security interest for a
19 specifically devised obligation[~~-~~];

20 (5) Any real property or tangible personal property owned
21 by the testator at death that the testator acquired as



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

12 SECTION 28. Section 560:2-608, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§560:2-608 Exercise of power of appointment.** In the
15 absence of a requirement that a power of appointment be
16 exercised by a reference [~~, or by an express~~] or specific
17 reference, to the power, a general residuary clause in a will,
18 or a will making general disposition of all of the testator's
19 property, [~~expresses~~] shall be deemed to express an intention to
20 exercise a power of appointment held by the testator only if:



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

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

7 SECTION 29. Section 560:2-704, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§560:2-704 Power of appointment; meaning of specific**
10 **reference requirement.** [~~¶~~] A powerholder's substantial
11 compliance with a formal requirement of appointment imposed in a
12 governing instrument [~~creating a power of appointment expressly~~
13 requires that the power be exercised] by [a] the donor,
14 including a requirement that the instrument exercising the power
15 of appointment make reference[~~, an express reference,~~] or [a]
16 specific reference[~~,~~] to the power [~~or its source, it is~~
17 ~~presumed that the donor's intention, in requiring that the donee~~
18 ~~exercise the power by making reference to the particular power~~
19 ~~or to the creating instrument, was to prevent an inadvertent~~
20 ~~exercise of the power.]~~ shall be sufficient if:



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

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

6 SECTION 30. Section 560:2-706, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

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

12 (1) Except as provided in paragraph (4), if the
13 beneficiary designation is not in the form of a class
14 gift and the deceased beneficiary leaves surviving
15 descendants, a substitute gift [~~is~~] shall be deemed to
16 be created in the beneficiary's surviving descendants.
17 [They] The beneficiary's surviving descendants shall
18 take by representation the property to which the
19 beneficiary would have been entitled had the
20 beneficiary survived 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 shall be deemed to be created in the surviving
8 descendants of any deceased beneficiary. The property
9 to which the beneficiaries would have been entitled
10 had all of them survived the decedent [~~passes~~] shall
11 pass to the surviving beneficiaries and the surviving
12 descendants of the deceased beneficiaries. Each
13 surviving beneficiary [~~takes~~] shall take the share to
14 which the surviving beneficiary would have been
15 entitled had the deceased beneficiaries survived the
16 decedent. Each deceased beneficiary's surviving
17 descendants who are substituted for the deceased
18 beneficiary shall take by representation the share to
19 which the deceased beneficiary would have been
20 entitled had the deceased beneficiary survived the
21 decedent. For the purposes of this paragraph,



1 "deceased beneficiary" means a class member who failed
2 to survive the decedent and left one or more surviving
3 descendants;

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

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

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

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



1 designated beneficiary of the alternative
2 beneficiary designation is entitled to take.

3 In this subsection:

4 "Descendant of a grandparent" means an individual
5 who 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 31. 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~~], shall be contingent on the beneficiary's surviving



1 the distribution date. If a beneficiary of a future interest
2 under the terms of a trust fails to survive the distribution
3 date, the following shall 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~~] shall be deemed to be created in
8 the beneficiary's surviving descendants. [~~They~~] The
9 beneficiary's surviving descendants shall take by
10 representation the property to which the beneficiary
11 would have been entitled had the beneficiary survived
12 the distribution date;

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



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

- 16 (3) For the purposes of section 560:2-701, words of
17 survivorship attached to a future interest [~~are~~] shall
18 not, in the absence of additional evidence, be a
19 sufficient indication of an intent contrary to the
20 application of this section. Words of survivorship
21 include words of survivorship that relate to the



1 distribution date or to an earlier or an unspecified
2 time, whether those words of survivorship are
3 expressed in condition-precedent, condition-
4 subsequent, or any other form; and

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

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

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

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



1 SECTION 32. Section 560:2-804, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Definitions. In this section:

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

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

13 "Divorced individual" includes an individual whose marriage
14 has been annulled.

15 "Governing instrument" means a governing instrument
16 executed by:

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

20 (2) An individual who is a former reciprocal beneficiary
21 before the termination of the reciprocal beneficiary



1 relationship with the individual's former reciprocal
2 beneficiary.

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

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

13 (1) The divorced individual, at the time of the divorce or
14 annulment, was alone empowered, by law or under the
15 governing instrument, to cancel the designation in
16 favor of the individual's former spouse or former
17 spouse's relative, regardless of whether [~~or not~~] the
18 divorced individual was then empowered to designate
19 the individual's self in place of the individual's
20 former spouse or in place of the individual's former
21 spouse's relative and regardless of whether [~~or not~~]



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

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

17 SECTION 33. Section 560:3-108, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§560:3-108 Probate, testacy and appointment proceedings;**
20 **ultimate time limit.** (a) No [~~informal~~] probate [~~or~~
21 ~~appointment~~] proceeding [~~or formal testacy or~~] to establish a



1 will and related appointment proceeding, other than [a] an
2 ancillary proceeding [~~to probate a will previously probated at~~
3 ~~the testator's domicile and appointment proceedings relating to~~
4 ~~an estate in which there has been a prior appointment, may],
5 shall be commenced more than five years after the decedent's
6 death[~~, except~~]; provided that:~~

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

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



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

5 (A) Ninety days after receiving notice of an informal
6 proceeding pursuant to section 560:3-306;

7 (B) Twelve months from the date the will was
8 informally admitted to probate; or

9 (C) Thirty days from the entry of a formal order
10 approving the accounts and settlement of the
11 estate by an informally appointed personal
12 representative,

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



1 ~~[-(4) An informal appointment or a formal testacy or~~
2 ~~appointment proceeding may be commenced thereafter if~~
3 ~~no proceedings concerning the succession or estate~~
4 ~~administration have occurred within the five year~~
5 ~~period after decedent's death, but the personal~~
6 ~~representative has no right to possess estate assets~~
7 ~~as provided in section 560:3-709 beyond that necessary~~
8 ~~to confirm title thereto in the successors to the~~
9 ~~estate and claims other than expenses of~~
10 ~~administration may not be presented against the~~
11 ~~estate.] and~~

12 ~~[-(5)]~~ (4) A formal testacy proceeding may be commenced at
13 any time after five years from the decedent's death
14 if ~~[in]~~ :

15 (A) In the discretion of the court, it would be
16 equitable to do so ~~[in]~~ for the purpose of
17 establishing an instrument to direct or control
18 the ownership of property passing or
19 distributable after the decedent's death from one
20 other than the decedent when the property is to
21 be appointed by the terms of the decedent's will



1 ~~[or is to pass or be distributed as a part of the~~
2 ~~decedent's estate or its transfer is otherwise to~~
3 ~~be controlled by the terms of the decedent's~~
4 ~~will.];~~

5 (B) The terms of the decedent's will provide for a
6 distribution to the decedent's revocable living
7 trust;

8 (C) Newly discovered assets of the decedent require
9 administration; or

10 (D) All interested parties who are entitled by
11 statute to notice of the petition join in the
12 petition.

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



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

4 [~~(e)~~] (d) In cases under subsection (a) (1) or (2), the
5 date on which a [~~testacy or appointment~~] probate proceeding is
6 properly commenced shall be deemed to be the date of the
7 decedent's death for purposes of other limitations provisions of
8 this chapter [~~which~~] that relate to the date of death."

9 SECTION 34. Section 560:3-203, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

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

20 SECTION 35. Section 560:3-301, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Applications for informal probate or informal
2 appointment shall be directed to the registrar, and verified by
3 the applicant to be accurate and complete to the best of the
4 applicant's knowledge and belief as to the following
5 information:

6 (1) Every application for informal probate of a will or
7 for informal appointment of a personal representative,
8 other than a special or successor representative,
9 shall contain the following:

10 (A) A statement of the interest of the applicant,
11 together with the name[]; residence, business,
12 or mailing address[]; and telephone number of
13 the applicant;

14 (B) The name[] and date of death of the decedent,
15 the decedent's age, [~~and~~] the county and state of
16 the decedent's domicile at the time of death, and
17 the names and addresses of the spouse or
18 reciprocal beneficiary, children, heirs, and
19 devisees and the ages of any who are minors so
20 far as known or ascertainable with reasonable
21 diligence by the applicant;



- 1 (C) If the decedent was not domiciled in the State at
- 2 the time of the decedent's death, a statement
- 3 showing venue;
- 4 (D) A statement identifying and indicating the
- 5 address of any personal representative of the
- 6 decedent appointed in this State or elsewhere
- 7 whose appointment has not been terminated;
- 8 (E) A statement indicating whether the applicant has
- 9 received a demand for notice, or is aware of any
- 10 demand for notice of any probate or appointment
- 11 proceeding concerning the decedent that may have
- 12 been filed in this State or elsewhere; and
- 13 (F) That the time limit for informal probate [~~or~~
- 14 ~~appointment~~] as provided in this article has not
- 15 expired either because five years or less have
- 16 passed since the decedent's death, or, if more
- 17 than five years from death have passed,
- 18 circumstances as described by section 560:3-108
- 19 authorizing tardy probate or appointment have
- 20 occurred;

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



1 application or petition for probate. The application
2 for appointment shall adopt the statements in the
3 application or petition for probate and state the
4 name, address, and priority for appointment of the
5 person whose appointment is sought;

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

9 (A) That after the exercise of reasonable diligence,
10 the applicant is unaware of any unrevoked
11 testamentary instrument relating to property
12 having a situs in this State under section
13 560:1-301[7] or[7] a statement why any such
14 instrument of which the applicant may be aware is
15 not being probated; and

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

20 (5) An application for appointment of a personal
21 representative to succeed a personal representative



1 appointed under a different testacy status shall refer
2 to the order in the most recent testacy proceeding,
3 state the name and address of the person whose
4 appointment is sought and of the person whose
5 appointment will be terminated if the application is
6 granted, and describe the priority of the applicant;
7 and

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

19 SECTION 36. Section 560:3-303, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§560:3-303 Informal probate; proof and findings required.

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

4 (1) The application is complete;

5 (2) The applicant has made an oath or affirmation that the
6 statements contained in the application are true to
7 the best of the applicant's knowledge and belief;

8 (3) The applicant appears from the application to be an
9 interested person as defined in section 560:1-201;

10 (4) On the basis of the statements in the application,
11 venue is proper;

12 (5) An original, duly executed and apparently unrevoked
13 will is in the registrar's possession;

14 (6) Any notice required by sections 560:3-204 and
15 560:3-306 has been given and that the application is
16 not within section 560:3-304; and

17 (7) It appears from the application that the time limit
18 for original probate has not expired.

19 (b) The application shall be denied if it indicates that a
20 personal representative has been appointed in another judicial
21 circuit of this State or except as provided in subsection (d),



1 if it appears that this or another will of the decedent has been
2 the subject of a previous probate order.

3 (c) A will [~~which~~] that appears to have the required
4 signatures and [~~which~~] contains an attestation clause showing
5 that requirements of execution under section 560:2-502,
6 560:2-503, or 560:2-506 have been met shall be probated without
7 further proof. In other cases, the registrar may assume
8 execution if the will appears to have been properly executed, or
9 the registrar may accept a sworn statement or affidavit of any
10 person having knowledge of the circumstances of execution,
11 regardless of whether [~~or not~~] the person was a witness to the
12 will.

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

19 (e) A will from a place [~~which~~] that does not provide for
20 probate of a will after death and [~~which~~] that is not eligible
21 for probate under subsection (a) [7] may be probated in this



1 State upon receipt by the registrar of a duly authenticated copy
2 of the will and a duly authenticated certificate of its legal
3 custodian that the copy filed is a true copy and that the will
4 has become operative under the law of the other place.

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

11 SECTION 37. Section 560:3-406, Hawaii Revised Statutes, is
12 amended to read as follows:

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

20 ~~(b) If the will is self-proved, compliance with signature~~
21 ~~requirements for execution is conclusively presumed and other~~



1 ~~requirements of execution are presumed subject to rebuttal~~
2 ~~without the testimony of any witness upon filing the will and~~
3 ~~the acknowledgment and affidavits annexed or attached thereto,~~
4 ~~unless there is proof of fraud or forgery affecting the~~
5 ~~acknowledgment or affidavit.] In a contested case hearing in~~
6 which the proper execution of a will is at issue, the following
7 rules shall apply:

- 8 (1) If the will is self-proved pursuant to section
9 560:2-504, the will shall be deemed to satisfy the
10 requirements for execution without the testimony of
11 any attesting witness, upon filing the will and the
12 acknowledgement and affidavits annexed or attached to
13 it, unless there is evidence of fraud or forgery
14 affecting the acknowledgment or affidavit; and
- 15 (2) If the will is witnessed pursuant to section
16 560:2-502(a)(3), but not self-proved, the testimony of
17 at least one of the attesting witnesses shall be
18 required to establish proper execution if within this
19 State, competent, and able to testify. Proper
20 execution may be established by other evidence,
21 including an affidavit of an attesting witness. An



1 attestation clause that is signed by the attesting
2 witnesses shall raise a rebuttable presumption that
3 the events received in the clause occurred."

4 SECTION 38. Section 560:3-605, Hawaii Revised Statutes, is
5 amended to read as follows:

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



1 giving suitable bond within thirty days after receipt of notice
2 [~~is~~] shall be cause [~~of~~] for the personal representative's
3 removal and appointment of a successor personal representative."

4 SECTION 39. Section 560:3-703, Hawaii Revised Statutes, is
5 amended to read as follows:

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

20 (b) A personal representative shall not be surcharged for
21 acts of administration or distribution if the conduct in



1 question was authorized at the time. Subject to other
2 obligations of administration, an informally probated will [~~is~~]
3 shall be authority to administer and distribute the estate
4 according to its terms. An order of appointment of a personal
5 representative, whether issued in informal or formal
6 proceedings, [~~is~~] shall be authority to distribute apparently
7 intestate assets to the heirs of the decedent if, at the time of
8 distribution, the personal representative is not aware of a
9 pending testacy proceeding, a proceeding to vacate an order
10 entered in an earlier testacy proceeding, a formal proceeding
11 questioning the personal representative's appointment or fitness
12 to continue, or a supervised administration proceeding.

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

20 (c) Except as to proceedings [~~which~~] that do not survive
21 the death of the decedent, a personal representative of a



1 decedent domiciled in this State at the decedent's death [~~has~~]
2 shall have the same standing to sue and be sued in the courts of
3 this State and the courts of any other jurisdiction as the
4 decedent had immediately [~~prior to~~] before death.

5 (d) A personal representative shall not be surcharged for
6 a distribution that does not take into consideration the
7 possibility of posthumous pregnancy unless the personal
8 representative, no later than six months after the decedent's
9 death, received notice or had actual knowledge of an intent to
10 use genetic material in assisted reproduction."

11 SECTION 40. Section 560:3-720, Hawaii Revised Statutes, is
12 amended to read as follows:

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



1 regardless of whether counsel has been retained on a contingency
2 fee basis."

3 SECTION 41. Section 560:3-801, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

18 SECTION 42. Section 560:3-803, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) All claims against either a decedent or a decedent's
21 estate [~~which~~] that arose before the death of the decedent,



1 including claims of the State and any subdivision thereof,
2 whether due or to become due, absolute or contingent, liquidated
3 or unliquidated, founded on contract, tort, or other legal
4 basis, if not barred earlier by another statute of limitations
5 or non-claim statute, [~~are~~] shall be barred against the estate,
6 [~~the~~] personal representative, [~~the~~] decedent's trustee, and
7 [~~the~~] heirs and devisees of the decedent, unless presented
8 within the earlier of the following:

9 (1) No later than:

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

13 (B) Sixty days after the [~~mailing or other delivery~~]
14 service of written notice, as provided in section
15 560:3-801(b);

16 whichever period in subparagraph (A) or (B) expires
17 later; or

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



1 SECTION 43. Section 560:3-806, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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



1 shall be barred if no petition for allowance or other proceeding
2 on the claim has been brought within eighteen months of the date
3 of the decedent's death. Failure of the personal representative
4 to ~~mail~~ serve notice ~~to~~ upon a claimant of action on the
5 claimant's claim for sixty days after the time for original
6 presentation of the claim has expired ~~has~~ shall have the
7 effect of a notice of allowance."

8 SECTION 44. Section 560:3-915, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) If the heir or devisee is under disability other than
11 minority, the personal representative ~~is~~ shall be authorized
12 to distribute to:

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



1 Persons receiving money or property for the disabled person
2 [~~are~~] shall be obligated to apply the money or property to the
3 support of that person, but [~~may~~] shall not pay themselves
4 except by way of reimbursement for out-of-pocket expenses for
5 goods and services necessary for the support of the disabled
6 person. Excess sums [~~must~~] shall be preserved for future
7 support of the disabled person. The personal representative
8 [~~is~~] shall not be responsible for the proper application of
9 money or property distributed pursuant to this subsection."

10 SECTION 45. Section 560:4-205, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§560:4-205 Powers.** A domiciliary foreign personal
13 representative who has complied with section 560:4-204 may
14 exercise as to assets in this State all powers of a local
15 personal representative and may maintain actions and proceedings
16 in this State subject to any [~~conditions~~]:

- 17 (1) Limitations on the personal representative's powers in
18 the domiciliary proceeding; and
19 (2) Conditions imposed upon nonresident parties
20 generally."



1 SECTION 46. Section 560:2-108, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§560:2-108 Afterborn heirs. An individual in gestation
4 at a particular time is treated as living at that time if the
5 individual lives one hundred twenty hours or more after birth."~~]

6 SECTION 47. Section 560:3-916, Hawaii Revised Statutes, is
7 repealed.

8 [~~"§560:3-916 Apportionment of estate taxes. (a) For
9 purposes of this section:~~

10 "~~Estate~~" means the gross estate of a decedent as determined
11 for the purpose of federal estate tax and the estate tax payable
12 to this State.

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

14 "~~Person~~" means any individual, partnership, association,
15 joint stock company, corporation, government, political
16 subdivision, governmental agency, or local governmental agency.

17 "~~Person interested in the estate~~" means any person entitled
18 to receive, or who has received, from a decedent or by reason of
19 the death of a decedent any property or interest therein
20 included in the decedent's estate. It includes a personal
21 representative, conservator, and trustee.



1 ~~"State" means any state, territory, or possession of the~~
2 ~~United States, the District of Columbia, and the Commonwealth of~~
3 ~~Puerto Rico.~~

4 ~~"Tax" means the federal estate tax and the additional~~
5 ~~inheritance tax imposed by Hawaii and interest and penalties~~
6 ~~imposed in addition to the tax.~~

7 ~~(b) Except as provided in subsection (j) and, unless the~~
8 ~~will otherwise provides, the tax shall be apportioned among all~~
9 ~~persons interested in the estate. The apportionment is to be~~
10 ~~made in the proportion that the value of the interest of each~~
11 ~~person interested in the estate bears to the total value of the~~
12 ~~interests of all persons interested in the estate. The values~~
13 ~~used in determining the tax are to be used for that purpose. If~~
14 ~~the decedent's will directs a method of apportionment of tax~~
15 ~~different from the method described in this chapter, the method~~
16 ~~described in the will controls.~~

17 ~~(c) The expenses reasonably incurred by any fiduciary and~~
18 ~~by other persons interested in the estate in connection with the~~
19 ~~determination of the amount and apportionment of the tax shall~~
20 ~~be apportioned as provided in subsection (b) and charged and~~
21 ~~collected as a part of the tax apportioned. If the court finds~~



1 ~~it is inequitable to apportion the expenses as provided in~~
2 ~~subsection (b), it may direct apportionment equitably.~~

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

6 ~~(2) If the court finds that it is inequitable to apportion~~
7 ~~interest and penalties in the manner provided in~~
8 ~~subsection (b), because of special circumstances, it~~
9 ~~may direct apportionment thereof in the manner it~~
10 ~~finds equitable;~~

11 ~~(3) If the court finds that the assessment of penalties~~
12 ~~and interest assessed in relation to the tax is due to~~
13 ~~delay caused by the negligence of the fiduciary, the~~
14 ~~court may charge the fiduciary with the amount of the~~
15 ~~assessed penalties and interest;~~

16 ~~(4) In any action to recover from any person interested in~~
17 ~~the estate the amount of the tax apportioned to the~~
18 ~~person in accordance with this chapter the~~
19 ~~determination of the court in respect thereto shall be~~
20 ~~prima facie correct.~~



1 ~~(e) (1) The personal representative or other person in~~
2 ~~possession of the property of the decedent required to~~
3 ~~pay the tax may withhold from any property~~
4 ~~distributable to any person interested in the estate,~~
5 ~~upon its distribution to that person, the amount of~~
6 ~~tax attributable to that person's interest. If the~~
7 ~~property in possession of the personal representative~~
8 ~~or other person required to pay the tax and~~
9 ~~distributable to any person interested in the estate~~
10 ~~is insufficient to satisfy the proportionate amount of~~
11 ~~the tax determined to be due from the person, the~~
12 ~~personal representative or other person required to~~
13 ~~pay the tax may recover the deficiency from the person~~
14 ~~interested in the estate. If the property is not in~~
15 ~~the possession of the personal representative or the~~
16 ~~other person required to pay the tax, the personal~~
17 ~~representative or the other person required to pay the~~
18 ~~tax may recover from any person interested in the~~
19 ~~estate the amount of the tax apportioned to the person~~
20 ~~in accordance with this chapter;~~



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

6 ~~(f)(1) In making an apportionment, allowances shall be made~~
7 ~~for any exemptions granted, any classification made of~~
8 ~~persons interested in the estate and for any~~
9 ~~deductions and credits allowed by the law imposing the~~
10 ~~tax;~~

11 ~~(2) Any exemption or deduction allowed by reason of the~~
12 ~~relationship of any person to the decedent or by~~
13 ~~reason of the purposes of the gift inures to the~~
14 ~~benefit of the person bearing such relationship or~~
15 ~~receiving the gift; but if an interest is subject to a~~
16 ~~prior present interest which is not allowable as a~~
17 ~~deduction, the tax apportionable against the present~~
18 ~~interest shall be paid from principal;~~

19 ~~(3) Any deduction for property previously taxed and any~~
20 ~~credit for gift taxes or death taxes of a foreign~~
21 ~~country paid by the decedent or the decedent's estate~~



1 ~~inures to the proportionate benefit of all persons~~
2 ~~liable to apportionment;~~
3 ~~(4) Any credit for inheritance, succession or estate taxes~~
4 ~~or taxes in the nature thereof applicable to property~~
5 ~~or interests includable in the estate, inures to the~~
6 ~~benefit of the persons or interests chargeable with~~
7 ~~the payment thereof to the extent proportionately that~~
8 ~~the credit reduces the tax;~~
9 ~~(5) To the extent that property passing to or in trust for~~
10 ~~a surviving spouse or reciprocal beneficiary or any~~
11 ~~charitable, public or similar purpose is not an~~
12 ~~allowable deduction for purposes of the tax solely by~~
13 ~~reason of an inheritance tax or other death tax~~
14 ~~imposed upon and deductible from the property, the~~
15 ~~property is not included in the computation provided~~
16 ~~for in subsection (b), and to that extent no~~
17 ~~apportionment is made against the property. The~~
18 ~~sentence immediately preceding does not apply to any~~
19 ~~case if the result would be to deprive the estate of a~~
20 ~~deduction otherwise allowable under section 2053(d) of~~
21 ~~the Internal Revenue Code of 1986, as amended, of the~~



1 ~~United States, relating to deduction for state death~~
2 ~~taxes on transfers for public, charitable, or~~
3 ~~religious uses.~~

4 ~~(g) No interest in income and no estate for years or for~~
5 ~~life or other temporary interest in any property or fund is~~
6 ~~subject to apportionment as between the temporary interest and~~
7 ~~the remainder. The tax on the temporary interest and the tax,~~
8 ~~if any, on the remainder is chargeable against the corpus of the~~
9 ~~property or funds subject to the temporary interest and~~
10 ~~remainder.~~

11 ~~(h) Neither the personal representative nor other person~~
12 ~~required to pay the tax is under any duty to institute any~~
13 ~~action to recover from any person interested in the estate the~~
14 ~~amount of the tax apportioned to the person until the expiration~~
15 ~~of the three months next following final determination of the~~
16 ~~tax. A personal representative or other person required to pay~~
17 ~~the tax who institutes the action within a reasonable time after~~
18 ~~the three-month period is not subject to any liability or~~
19 ~~surcharge because any portion of the tax apportioned to any~~
20 ~~person interested in the estate was collectible at a time~~
21 ~~following the death of the decedent but thereafter became~~



1 ~~uncollectible. If the personal representative or other person~~
2 ~~required to pay the tax cannot collect from any person~~
3 ~~interested in the estate the amount of the tax apportioned to~~
4 ~~the person, the amount not recoverable shall be equitably~~
5 ~~apportioned among the other persons interested in the estate who~~
6 ~~are subject to apportionment.~~

7 ~~(i) A personal representative acting in another state or a~~
8 ~~person required to pay the tax domiciled in another state may~~
9 ~~institute an action in the courts of this State and may recover~~
10 ~~a proportionate amount of the federal estate tax, of an estate~~
11 ~~tax payable to another state or of a death duty due by a~~
12 ~~decedent's estate to another state, from a person interested in~~
13 ~~the estate who is either domiciled in this State or who owns~~
14 ~~property in this State subject to attachment or execution. For~~
15 ~~the purposes of the action the determination of apportionment by~~
16 ~~the court having jurisdiction of the administration of the~~
17 ~~decedent's estate in the other state is prima facie correct.~~

18 ~~(j) If the liabilities of persons interested in the estate~~
19 ~~as prescribed by this chapter differ from those which result~~
20 ~~under the federal estate tax law, the liabilities imposed by the~~
21 ~~federal law will control and the balance of this section shall~~



1 ~~apply as if the resulting liabilities had been prescribed~~
2 ~~herein."]~~

3 PART V

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

8 SECTION 49. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun before its effective date.

11 SECTION 50. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

15



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. (HD1)

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

