

JAN 20 2023

S.B. NO. 483

---

# A BILL FOR AN ACT

---

RELATING TO THE UNIFORM PROBATE CODE.

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

SECTION 1. The purpose of this Act is to update articles I through IV of the Uniform Probate Code, with appropriate amendments to reflect Hawaii law and practice where relevant. Adopted in Hawaii in 1969 and last updated in 1996, the Uniform Probate Code is a national codification of the law of probate, which provides for greater clarity and uniformity in probate law and interpretation. This Act makes necessary updates to 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.

PART I

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

" . PARENT-CHILD RELATIONSHIP

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

"Adoptee" means an individual who is adopted.



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

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

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

9 (1) Fulfilling parental responsibilities toward the child;

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

11 and

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

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

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



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

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

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

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

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

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

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

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



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

8       (2) A child of a genetic parent who is in the process of  
9       being adopted by a genetic parent's spouse or  
10      reciprocal beneficiary when the spouse or reciprocal  
11      beneficiary dies is treated as adopted by the deceased  
12      spouse or reciprocal beneficiary if the genetic parent  
13      survives the deceased spouse or reciprocal beneficiary  
14      by one hundred twenty hours.

15      (c) If, after a parent-child relationship is established  
16      between a child of assisted reproduction and a parent under  
17      section 560:2-F, or between a gestational child and a parent  
18      under section 560:2-G, the child is in the process of being  
19      adopted by the parent's spouse or reciprocal beneficiary when  
20      the spouse or reciprocal beneficiary dies, the child is treated



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

19 (2) In the absence of a signed record under paragraph (1):

20 (A) Functioned as a parent of the child no later than  
21 two years after the child's birth;





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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



## PART II

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

"A. GENERAL PROVISIONS"

## PART III

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

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

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





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

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

6 "PART . UNIFORM ESTATE TAX APPORTIONMENT ACT

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

9 §560:3-B Definitions. In this part:

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

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

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

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



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

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

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

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

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



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

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

9 (1) To the extent that a provision of a decedent's will  
10 expressly and unambiguously directs the apportionment  
11 of an estate tax, the tax shall be apportioned  
12 accordingly;

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



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

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

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

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



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

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

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

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



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

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

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



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

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

14           (1) Subject to paragraphs (2), (3), and (4), the estate  
15 tax is apportioned ratably to each person that has an  
16 interest in the apportionable estate;

17           (2) A generation-skipping transfer tax incurred on a  
18 direct skip taking effect at death is charged to the  
19 person to which the interest in property is  
20 transferred;



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

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

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





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



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

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

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

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

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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

9           **§560:3-L Reserved.**

10          **§560:3-M Reserved.**

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

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





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

3 PART IV

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

5 "**§560:1-403 Pleadings; when parties bound by others;**  
6 **notice.** In formal proceedings involving trusts or estates of  
7 decedents, minors, protected persons, or incapacitated persons,  
8 and in judicially supervised settlements, the following rules  
9 apply:

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

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

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



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

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

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

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

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

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



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

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

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

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

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



1           (A) ~~[Notice]~~ The notice as prescribed by section  
2                   560:1-401 shall be given to every interested  
3                   person or to one who can bind an interested  
4                   person as described in paragraph (2)(A) or  
5                   (2)(B). Notice may be given both to a person and  
6                   to another who may bind the person; and

7           (B) Notice is given to unborn or unascertained  
8                   persons~~[7]~~ who are not represented under  
9                   paragraph (2)(A) or (2)(B)~~[7]~~ by giving notice to  
10                  all known persons whose interests in the  
11                  proceedings are substantially identical to those  
12                  of the unborn or unascertained persons; and

13       ~~[-4-]~~ (5) At any point in a proceeding, a court may appoint  
14                  a guardian ad litem to represent the interest of a  
15                  minor, an incapacitated, unborn, or unascertained  
16                  person, or a person whose identity or address is  
17                  unknown, if the court determines that representation  
18                  of the interest otherwise would be inadequate. If not  
19                  precluded by conflict of interests, a guardian ad  
20                  litem may be appointed to represent several persons or  
21                  interests. The court shall set out its reasons for



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

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

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

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

8           (1) The entire intestate estate if:

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

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

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

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





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

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

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

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

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

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



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

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

11 ~~(1) To the decedent's descendants by representation,~~

12 ~~(2) If there is no surviving descendant, to the decedent's~~  
13 ~~parents equally if both survive, or to the surviving~~  
14 ~~parent, provided, however, if the decedent is a minor,~~  
15 ~~and if it is shown by clear and convincing evidence~~  
16 ~~that any parent has:~~

17 ~~(A) Deserted the child without affording means of~~  
18 ~~identification for a period of at least ninety~~  
19 ~~days,~~



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

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

9       ~~such parent shall be deemed to have predeceased the~~  
10       ~~decedent;~~

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

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



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

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

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

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



1        (1) The intestate estate or part thereof is divided into  
2        as many equal shares as there are:

3        (A) Surviving parents; and

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

7        (2) One share passes to each surviving parent; provided  
8        that if the decedent is a minor, and if it is shown by  
9        clear and convincing evidence that any parent has:

10       (A) Deserted the child without affording means of  
11       identification for a period of at least ninety  
12       days;

13       (B) Failed to communicate with the child when able to  
14       do so for a period of at least one year when the  
15       child is in the custody of another; or

16       (C) Failed to provide for care and support of the  
17       child when able to do so for a period of at least  
18       one year when the child is in the custody of  
19       another, despite an order requiring child  
20       support;



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

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

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

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

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



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

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

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

12       (A) Surviving grandparents; and

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

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

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



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

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

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

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





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

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

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

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

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

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



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

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

20       (3) If the decedent dies before the start of a pregnancy  
21       by assisted reproduction resulting in the birth of an



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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

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





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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

~~If the decedent and the~~

~~spouse were married to~~

~~each other, or the~~

~~decedent and the reciprocal~~

~~beneficiary were in a~~

~~relationship:~~

~~The elective share~~

~~percentage is:~~

~~Less than 1 year~~

~~Supplemental amount only.~~

~~1 year but less than 2 years~~

~~3% of the augmented estate.~~

~~2 years but less than 3 years~~

~~6% of the augmented estate.~~



## S.B. NO. 403

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

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



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

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

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

19 (1) Decedent's net probate estate[~~, the decedent's~~];

20 (2) Decedent's nonprobate transfers to others[~~, the~~  
21 ~~decedent's~~];



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

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

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

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



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

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

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

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

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

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





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

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

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



1 the decedent's estate or surviving spouse or  
2 reciprocal beneficiary. As used herein,  
3 "ownership interest" is determined by dividing  
4 (i) the sum of all the decedent's deposits to the  
5 account, including deposit life insurance  
6 proceeds added to the account on account of the  
7 decedent's death, less all withdrawals made by or  
8 for the benefit of the decedent, by (ii) the sum  
9 of all deposits to the account; and

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



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

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

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



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

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



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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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





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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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



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

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

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



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

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





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

5       (1) Provisions of a will stating material provisions of  
6 the contract;

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

10       (3) A writing [~~signed by the decedent~~] evidencing the  
11 contract[-] and signed by the party alleged to have  
12 breached the contract.

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

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

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



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

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

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



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

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

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



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

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

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

15       (6) In this subsection:

16       "Descendant of a grandparent" means an individual who  
17       qualifies as a descendent of a grandparent of the  
18       testator or of the donor of a power of appointment  
19       under the:

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



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

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

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

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

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

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

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

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



1 foreclosure, of the security interest for a  
2 specifically devised obligation[-];

3 (5) Any real property or tangible personal property owned  
4 by the testator at death that the testator acquired as  
5 a replacement for specifically devised real property  
6 or tangible personal property; and

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

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

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



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

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

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

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

12 **"§560:2-704 Power of appointment; meaning of specific**  
13 **reference requirement.** [~~if~~] A powerholder's substantial  
14 compliance with a formal requirement of appointment imposed in a  
15 governing instrument [~~creating a power of appointment expressly~~  
16 ~~requires that the power be exercised~~] by [a] the donor,  
17 including a requirement that the instrument exercising the power  
18 of appointment make reference[~~, an express reference,~~] or [a]  
19 specific reference[~~7~~] to the power [~~or its source, it is~~  
20 ~~presumed that the donor's intention, in requiring that the donee~~  
21 ~~exercise the power by making reference to the particular power~~



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

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

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

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

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

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





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



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

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

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

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

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



1 beneficiary designation is entitled to take[-];

2 and

3 (5) In this section:

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

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

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

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

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

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



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

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

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



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

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



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

2 and

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

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

11 or

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

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

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



1        "(a) Definitions. In this section:

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

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

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

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

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

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



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

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

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





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

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

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

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



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

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

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

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



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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



1           decedent appointed in this State or elsewhere  
2           whose appointment has not been terminated;

3           (E) A statement indicating whether the applicant has  
4           received a demand for notice, or is aware of any  
5           demand for notice of any probate or appointment  
6           proceeding concerning the decedent that may have  
7           been filed in this State or elsewhere; and

8           (F) That the time limit for informal probate [~~or~~  
9           ~~appointment~~] as provided in this article has not  
10          expired either because five years or less have  
11          passed since the decedent's death, or, if more  
12          than five years from death have passed,  
13          circumstances as described by section 560:3-108  
14          authorizing tardy probate or appointment have  
15          occurred;

16          (2) An application for informal probate of a will shall  
17          state the following in addition to the statements  
18          required by paragraph (1):

19          (A) That the original of the decedent's last will is  
20          in the possession of the court, or accompanies  
21          the application, or that an authenticated copy of





1           a will probated, filed, deposited, or lodged in  
2           another jurisdiction accompanies the application;

3           (B) That the applicant, to the best of applicant's  
4           knowledge, believes the will to have been validly  
5           executed; and

6           (C) That after the exercise of reasonable diligence,  
7           the applicant is unaware of any instrument  
8           revoking the will, and that the applicant  
9           believes that the instrument [~~which~~] that is the  
10          subject of the application is the decedent's last  
11          will;

12          (3) An application for informal appointment of a personal  
13          representative to administer an estate under a will  
14          shall describe the will by date of execution and state  
15          the time and place of probate or the pending  
16          application or petition for probate. The application  
17          for appointment shall adopt the statements in the  
18          application or petition for probate and state the  
19          name, address, and priority for appointment of the  
20          person whose appointment is sought;



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

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

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

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



1 granted, and describe the priority of the applicant;

2 and

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

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

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

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

19 (1) The application is complete;



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

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

6           (4) On the basis of the statements in the application,  
7           venue is proper;

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

10          (6) Any notice required by sections 560:3-204 and  
11          560:3-306 has been given and that the application is  
12          not within section 560:3-304; and

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

15          (b) The application shall be denied if it indicates that a  
16          personal representative has been appointed in another judicial  
17          circuit of this State or except as provided in subsection (d),  
18          if it appears that this or another will of the decedent has been  
19          the subject of a previous probate order.

20          (c) A will [~~which~~] that appears to have the required  
21          signatures and [~~which~~] contains an attestation clause showing



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

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

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



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

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

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

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



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

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

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



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

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





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

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

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



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

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

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



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

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

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

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



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

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

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

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



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

7 (1) No later than:

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

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

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

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



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



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

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

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

10 (1) An attorney in fact who has authority under a power of  
11 attorney to receive property for that person; or

12 (2) The spouse or reciprocal beneficiary, parent, or other  
13 close relative with whom the person under disability  
14 resides if the distribution is of amounts not  
15 exceeding ~~[\$10,000]~~ \$30,000 a year, or property not  
16 exceeding ~~[\$10,000]~~ \$30,000 in value, unless the court  
17 authorizes a larger amount or greater value.

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



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

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

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

13 (1) Limitations on the person representative's powers in  
14 the domiciliary proceeding; and

15 (2) Conditions imposed upon nonresident parties  
16 generally."

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

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





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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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



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



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

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



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

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



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

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

#### PART V

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

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





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

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

5  
INTRODUCED BY: \_\_\_\_\_



By Request



# S.B. NO. 483

**Report Title:**

Judiciary Package; Probate Code

**Description:**

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

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

