
A BILL FOR AN ACT

RELATING TO THE UNIFORM PROBATE CODE.

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

1 PART I

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

12 PART II

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

16 " . PARENT-CHILD RELATIONSHIP

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



1 "Adoptee" means an individual who is adopted.

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

5 "Divorce" means an annulment, a dissolution, or a
6 declaration of invalidity of a marriage.

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

17 (2) The other genetic parent, but only for the purpose of
18 the right of the adoptee or a descendant of the
19 adoptee to inherit from or through the other genetic
20 parent.



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

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

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

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



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

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

8 (1) A spouse who provides sperm or eggs that are used for
9 assisted reproduction by a gestational spouse;

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

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

15 (b) A parent-child relationship shall not be deemed to
16 exist between a child of assisted reproduction and a third-party
17 donor.

18 (c) A parent-child relationship shall be deemed to exist
19 between a child of assisted reproduction and the child's birth
20 mother.



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

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

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



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



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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

18 "A. GENERAL PROVISIONS"

19 PART III



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

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

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

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

20 "PART . UNIFORM ESTATE TAX APPORTIONMENT ACT



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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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



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

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

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



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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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

17 (1) Any person having an interest in the apportionable
18 estate that is not exonerated from the tax;

19 (2) Any other person having an interest in the
20 apportionable estate; and

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



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

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

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

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

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



1 personal representative, or formal proceeding to adjudicate
2 intestacy.

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

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

8 (1) Execute or adopt a tangible symbol; or

9 (2) Attach to or logically associate with the record an
10 electronic symbol, sound, or process."

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

12 ~~""Beneficiary", as it relates to a [trust beneficiary,~~
13 ~~includes a person who has any present or future interest, vested~~
14 ~~or contingent, and also includes the owner of an interest by~~
15 ~~assignment or other transfer; as it relates to a charitable~~
16 ~~trust, includes any person entitled to enforce the trust; as it~~
17 ~~relates to a "beneficiary of a beneficiary designation", refers~~
18 ~~to a beneficiary of an insurance or annuity policy, of an~~
19 ~~account with POD designation, of a security registered in~~
20 ~~beneficiary form (TOD), or of a pension, profit sharing,~~



1 ~~retirement, or similar benefit plan, or other nonprobate~~
2 ~~transfer at death, and, as it relates to a "beneficiary] :~~

3 (1) "Beneficiary designated in a governing instrument",
4 [includes] means a [grantee] :

5 (A) Grantee of a deed[, a devisee, a trust] ;

6 (B) Devisee;

7 (C) Trust beneficiary[, a beneficiary] ;

8 (D) Beneficiary of a beneficiary designation[, a
9 donee,] ;

10 (E) Donee, appointee, or taker in default of a power
11 of appointment[-] ; or [a person]

12 (F) Person in whose favor a power of attorney or a
13 power held in any individual, fiduciary, or
14 representative capacity is exercised[-] ;

15 (2) "Beneficiary of a beneficiary designation", means a
16 beneficiary of:

17 (A) An insurance or annuity policy;

18 (B) An account with POD designation;

19 (C) A security registered in beneficiary form (TOD);

20 (D) A transfer on death deed;



1 (E) A pension, profit-sharing, retirement, or similar
2 benefit plan; or

3 (F) Any other nonprobate transfer at death;

4 (3) "Charitable trust", means any person entitled to
5 enforce the trust; and

6 (4) "Trust beneficiary", means:

7 (A) A person who has any present or future interest,
8 vested or contingent; or

9 (B) The owner of an interest by assignment or other
10 transfer."

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

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

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

16 "(a) If notice of a hearing on any petition is required
17 and except for specific notice requirements as otherwise
18 provided, the petitioner shall cause notice of the time and
19 place of hearing of any petition to be given to any interested
20 person or the person's attorney if the person has appeared by
21 attorney or requested that notice be sent to the person's



1 attorney, or, in the case of a minor or an incapacitated person,
2 the minor's or incapacitated person's parent or guardian, as
3 appropriate. Notice shall be given:

- 4 (1) By mailing a copy thereof at least fourteen days
5 before the time set for the hearing by certified,
6 registered, or ordinary [~~first-class~~] first-class mail
7 addressed to the person being notified at the post
8 office address given in the person's demand for
9 notice, if any, or at the person's office or place of
10 residence, if known;
- 11 (2) By delivering a copy thereof to the person being
12 notified personally at least fourteen days before the
13 time set for the hearing; or
- 14 (3) If the address or identity of any person is not known
15 and cannot be ascertained with reasonable diligence,
16 by publishing at least once a week for [~~three~~] two
17 consecutive weeks, a copy thereof in a newspaper
18 having general circulation in the judicial circuit
19 where the hearing is to be held, the last publication
20 of which is to be at least ten days before the time
21 set for the hearing."



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

3 "§560:1-403 Pleadings; when parties bound by others;
4 notice. In formal proceedings involving trusts or estates of
5 decedents, minors, protected persons, or incapacitated persons,
6 and in judicially supervised settlements, the following rules
7 shall apply:

- 8 (1) Interests to be affected shall be described in
9 pleadings [~~which~~] that give reasonable information to
10 owners by name or class, by reference to the
11 instrument creating the interests, or in [~~either~~]
12 another appropriate manner;
- 13 (2) [~~Persons are~~] A person shall be bound by [~~orders~~] an
14 order binding [~~either~~] another in the following cases:
- 15 (A) Orders binding the sole holder or all co-holders
16 of a power of revocation or a presently
17 exercisable general power of appointment,
18 including one in the form of a power of
19 amendment, shall bind other persons to the extent
20 their interests (as objects, takers in default,
21 or otherwise) are subject to the power;



1 (B) To the extent there is no conflict of interest
2 between them or among persons represented,
3 ~~[orders binding a]~~ an order binding:
4 (i) A conservator shall bind the person whose
5 estate the conservator controls; ~~[orders~~
6 ~~binding a]~~
7 (ii) A guardian shall bind the ward if no
8 conservator of the ward's estate has been
9 appointed; ~~[orders binding a]~~
10 (iii) A trustee shall bind beneficiaries of the
11 trust in proceedings to probate a will
12 establishing or adding to a trust, to review
13 the acts or accounts of a ~~[prior]~~ former
14 fiduciary, and in proceedings involving
15 creditors or other third parties; ~~[and~~
16 ~~orders binding a]~~
17 (iv) A personal representative shall bind persons
18 interested in the undistributed assets of a
19 decedent's estate in actions or proceedings
20 by or against the estate ~~[. If there is no~~
21 ~~conflict of interest and no conservator or~~



1 ~~guardian has been appointed, a parent may~~
 2 ~~represent the parent's minor child]; and~~
 3 (v) A sole holder or all co-holders of a general
 4 testamentary power of appointment shall bind
 5 other persons to the extent their interests
 6 as objects, takers in default, or otherwise
 7 are subject to the power; and

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

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

17 ~~[(3)]~~ (4) Notice is required as follows:

18 (A) ~~[Notice]~~ The notice as prescribed by section
 19 560:1-401 shall be given to every interested
 20 person or to one who can bind an interested
 21 person as described in paragraph (2) (A) or



1 (2) (B). Notice may be given both to a person and
 2 to another who may bind the person; and
 3 (B) Notice is given to unborn or unascertained
 4 persons [7] who are not represented under
 5 paragraph (2) (A) or (2) (B) [7] by giving notice to
 6 all known persons whose interests in the
 7 proceedings are substantially identical to those
 8 of the unborn or unascertained persons; and

9 [~~4~~] (5) At any point in a proceeding, a court may appoint
 10 a guardian ad litem to represent the interest of a
 11 minor, an incapacitated, unborn, or unascertained
 12 person, or a person whose identity or address is
 13 unknown, if the court determines that representation
 14 of the interest otherwise would be inadequate. If not
 15 precluded by conflict of interests, a guardian ad
 16 litem may be appointed to represent several persons or
 17 interests. The court shall set out its reasons for
 18 appointing a guardian ad litem as a part of the record
 19 of the proceeding."

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



1 "§560:2-102 Share of spouse or reciprocal beneficiary.

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

4 (1) The entire intestate estate if:

5 (A) No descendant or parent of the decedent survives
6 the decedent; or

7 (B) All of the decedent's surviving descendants are
8 also descendants of the surviving spouse or
9 reciprocal beneficiary and there is no other
10 descendant of the surviving spouse or reciprocal
11 beneficiary who survives the decedent;

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

16 (3) The first [~~\$150,000,~~] \$330,000, plus one-half of any
17 balance of the intestate estate, if all of the
18 decedent's surviving descendants are also descendants
19 of the surviving spouse or reciprocal beneficiary and
20 the surviving spouse or reciprocal beneficiary has one



1 or more surviving descendants who are not descendants
2 of the decedent; or

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

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

9 "**§560:2-103 Share of heirs other than surviving spouse or**
10 **reciprocal beneficiary.** (a) Definitions. In this section:

11 "Deceased parent", "deceased grandparent", or "deceased
12 spouse" means a parent, grandparent, or spouse, as applicable,
13 who either predeceased the decedent or is deemed under this
14 article to have predeceased the decedent.

15 "Surviving parent", "surviving grandparent", "surviving
16 spouse", "surviving reciprocal beneficiary", or "surviving
17 descendant" means a parent, grandparent, spouse, reciprocal
18 beneficiary, or descendant who neither predeceased the decedent
19 nor is deemed under this article to have predeceased the
20 decedent.



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

8 ~~(1) To the decedent's descendants by representation;~~
9 ~~(2) If there is no surviving descendant, to the decedent's~~
10 ~~parents equally if both survive, or to the surviving~~
11 ~~parent; provided, however, if the decedent is a minor,~~
12 ~~and if it is shown by clear and convincing evidence~~
13 ~~that any parent has:~~

14 ~~(A) Deserted the child without affording means of~~
15 ~~identification for a period of at least ninety~~
16 ~~days;~~
17 ~~(B) Failed to communicate with the child when able to~~
18 ~~do so for a period of at least one year when the~~
19 ~~child is in the custody of another; or~~
20 ~~(C) Failed to provide for care and support of the~~
21 ~~child when able to do so for a period of at least~~



1 ~~one year when the child is in the custody of~~
2 ~~another despite a child support order requiring~~
3 ~~such support;~~
4 ~~such parent shall be deemed to have predeceased the~~
5 ~~decedent;~~
6 (3) ~~If there is no surviving descendant or parent entitled~~
7 ~~to inherit, to the descendants of the decedent's~~
8 ~~parents or either of them by representation; and~~
9 (4) ~~If there is no surviving descendant, parent entitled~~
10 ~~to take, or descendant of a parent, but the decedent~~
11 ~~is survived by one or more grandparents or descendants~~
12 ~~of grandparents, half of the estate passes to the~~
13 ~~decedent's paternal grandparents equally if both~~
14 ~~survive, or to the surviving paternal grandparent, or~~
15 ~~to the descendants of the decedent's paternal~~
16 ~~grandparents or either of them if both are deceased,~~
17 ~~the descendants taking by representation; and the~~
18 ~~other half passes to the decedent's maternal relatives~~
19 ~~in the same manner, but if there is no surviving~~
20 ~~grandparent or descendant of a grandparent on either~~
21 ~~the paternal or the maternal side, the entire estate~~



1 ~~passes to the decedent's relatives on the other side~~
2 ~~in the same manner as the half.]~~

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

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

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

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

18 (A) Surviving parents; and

19 (B) Deceased parents with one or more surviving
20 descendants, if any, as determined under

21 subsection (e);



1 (2) One share shall pass to each surviving parent;
2 provided that if the decedent is a minor, and if it is
3 shown by clear and convincing evidence that any parent
4 has:
5 (A) Deserted the minor without affording means of
6 identification for a period of at least ninety
7 days;
8 (B) Failed to communicate with the minor when able to
9 do so for a period of at least one year when the
10 minor is in the custody of another; or
11 (C) Failed to provide for care and support of the
12 minor when able to do so for a period of at least
13 one year when the minor is in the custody of
14 another, despite an order requiring child
15 support,
16 the parent shall be deemed to have predeceased the
17 decedent; and
18 (3) The balance of the intestate estate or part thereof,
19 if any, shall pass by representation to the surviving
20 descendants of the decedent's deceased parents, as
21 determined under subsection (e).



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

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

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

15 (f) Surviving descendant of deceased parent. If a
16 decedent is not survived by a descendant or parent but is
17 survived by one or more descendants of a deceased parent, the
18 intestate estate shall pass by representation to the surviving
19 descendants of the decedent's deceased parents.

20 (g) Surviving grandparents. If a decedent is not survived
21 by a descendant, parent, or descendant of a parent but is



1 survived by one or more grandparents, the intestate estate shall
2 be distributed as follows:

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

5 (A) Surviving grandparents; and

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

9 (2) One share shall pass to each surviving grandparent;
10 and

11 (3) The balance of the intestate estate, if any, shall
12 pass by representation to the surviving descendants of
13 the decedent's deceased grandparents, as determined
14 under subsection (h).

15 (h) When a grandparent survives: computation of shares of
16 surviving descendants of a deceased grandparent. The following
17 rules shall apply under subsection (g) to determine whether a
18 deceased grandparent of the decedent is treated as having a
19 surviving descendant:

20 (1) If all of the surviving descendants of one or more
21 deceased grandparents are also descendants of one or



1 more surviving grandparents, those descendants shall
2 be deemed to have predeceased the decedent; and

3 (2) If two or more deceased grandparents have the same
4 surviving descendants and none of those deceased
5 grandparents has any other surviving descendant, those
6 deceased grandparents shall be deemed to be one
7 deceased grandparent with surviving descendants.

8 (i) Surviving descendant of deceased grandparent. If a
9 decedent is not survived by a descendant, parent, descendant of
10 a parent, or grandparent but is survived by one or more
11 descendants of a grandparent, the intestate estate shall pass by
12 representation to the surviving descendants of the decedent's
13 deceased grandparents.

14 (j) Surviving descendants of deceased spouse or reciprocal
15 beneficiary. If a decedent is not survived by a descendant,
16 parent, descendant of a parent, grandparent, or descendant of a
17 grandparent but is survived by one or more descendants of a
18 deceased spouse or reciprocal beneficiary, the intestate estate
19 shall pass by representation to the surviving descendants of the
20 decedent's deceased spouses or reciprocal beneficiaries."



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

3 "§560:2-104 Requirement [that heir survive decedent for]
4 of survival by one hundred twenty hours[-]; gestational period;
5 pregnancy after decedent's death. (a) In this section,
6 "gestational period" means the time between the start of a
7 pregnancy and birth.

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

11 (1) An individual born before a decedent's death who fails
12 to survive the decedent by one hundred twenty hours
13 [~~is~~] shall be deemed to have predeceased the decedent
14 [~~for purposes of homestead allowance, exempt property,~~
15 ~~and intestate succession, and the decedent's heirs are~~
16 ~~determined accordingly~~]. If it is not established by
17 clear and convincing evidence that an individual [~~who~~
18 ~~would otherwise be an heir~~] born before a decedent's
19 death survived the decedent by one hundred twenty
20 hours, it [~~is~~] shall be deemed that the individual
21 failed to survive for the required period[-];



- 1 (2) An individual in gestation at the decedent's death
2 shall be deemed to be living at the decedent's death
3 if the individual lives one hundred twenty hours after
4 birth. If it is not established by clear and
5 convincing evidence that an individual in gestation at
6 the decedent's death lived one hundred twenty hours
7 after birth, it shall be deemed that the individual
8 failed to survive for the required period; and
- 9 (3) If the decedent dies before the start of a pregnancy
10 by assisted reproduction resulting in the birth of an
11 individual who lives at least one hundred twenty hours
12 after birth, that individual shall be deemed to be
13 living at the decedent's death if the decedent's
14 personal representative, no later than six months
15 after the decedent's death, received notice or had
16 actual knowledge of an intent to use genetic material
17 in the assisted reproduction and:
- 18 (A) The embryo was in utero no later than thirty-six
19 months after the decedent's death; or
- 20 (B) The individual was born no later than forty-five
21 months after the decedent's death.



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

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

6 "**§560:2-106 Representation.** (a) Definitions. In this
7 section:

8 "Deceased descendant", "deceased parent", [~~or~~] "deceased
9 grandparent", "deceased spouse", or "deceased reciprocal
10 beneficiary" means a descendant, parent, [~~or~~] grandparent,
11 spouse, or reciprocal beneficiary who either predeceased the
12 decedent or is deemed to have predeceased the decedent under
13 section 560:2-104.

14 "Surviving descendant" means a descendant who neither
15 predeceased the decedent nor is deemed to have predeceased the
16 decedent under section 560:2-104.

17 (b) Decedent's descendants. If, under section [~~560:2-~~
18 ~~103(1)-,~~] 560:2-103(c), all or part of a decedent's intestate
19 estate [~~or a part thereof~~] passes "by representation" to the
20 decedent's descendants, the estate or part thereof [~~is~~] shall be
21 divided into as many equal shares as there are:



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

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

6 Each surviving descendant in the nearest generation [~~is~~] shall
7 be allocated one share. The remaining shares, if any, [~~are~~]
8 shall be combined and then divided in the same manner among the
9 surviving descendants of the deceased descendants as if the
10 surviving descendants who were allocated a share and their
11 surviving descendants had predeceased the decedent.

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

19 (1) ~~Surviving descendants in the generation nearest the~~
20 ~~deceased parents or either of them, or the deceased~~



1 ~~grandparents or either of them, that contains one or~~
2 ~~more surviving descendants; and~~

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

5 ~~Each surviving descendant in the nearest generation is allocated~~
6 ~~one share. The remaining shares, if any, are combined and then~~
7 ~~divided in the same manner among the surviving descendants of~~
8 ~~the deceased descendants as if the surviving descendants who~~
9 ~~were allocated a share and their surviving descendants had~~
10 ~~predeceased the decedent.]~~

11 (c) Descendants of parent when parent survives. If a
12 decedent is survived by one or more parents and, under section
13 560:2-103(d) and (e), the balance of the decedent's intestate
14 estate or part thereof passes by representation to the surviving
15 descendants of one or more of the decedent's deceased parents,
16 the balance shall pass to those descendants as if they were the
17 decedent's surviving descendants under subsection (b).

18 (d) Descendants of parent when no parent survives. If a
19 decedent is not survived by a parent and, under section
20 560:2-103(f), the decedent's intestate estate passes by
21 representation to the surviving descendants of one or more of



1 the decedent's deceased parents, the intestate estate shall pass
2 to those descendants as if they were the decedent's surviving
3 descendants under subsection (b).

4 (e) Descendants of grandparent when grandparent survives.
5 If a decedent is survived by one or more grandparents and, under
6 section 560:2-103(g) and (h), the balance of the decedent's
7 intestate estate passes by representation to the surviving
8 descendants of one or more of the decedent's deceased
9 grandparents, the balance shall pass to those descendants as if
10 they were the decedent's surviving descendants under subsection
11 (b).

12 (f) Descendants of grandparent when no grandparent
13 survives. If a decedent is not survived by a grandparent and,
14 under section 560:2-103(i), the decedent's intestate estate
15 passes by representation to the surviving descendants of one or
16 more of the decedent's deceased grandparents, the intestate
17 estate shall pass to those descendants as if they were the
18 decedent's surviving descendants under subsection (b).

19 (g) Descendants of deceased spouse or reciprocal
20 beneficiary. If a decedent is survived by descendants of one or
21 more deceased spouses or reciprocal beneficiaries and, under



1 section 560:2-103(j), the decedent's intestate estate passes by
2 representation to the surviving descendants of one or more of
3 the decedent's deceased spouses or reciprocal beneficiaries, the
4 intestate estate shall pass to those descendants as if they were
5 the decedent's surviving descendants under subsection (b)."

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

8 "§560:2-107 ~~[Kindred of half blood. Relatives of the half~~
9 ~~blood inherit the same share they would inherit if they were of~~
10 ~~the whole blood.] Inheritance without regard to number of common~~
11 ancestors in the same generation. An heir shall inherit without
12 regard to how many common ancestors in the same generation the
13 heir shares with the decedent."

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

16 "§560:2-113 ~~Individuals related to decedent through [two~~
17 ~~lines.] more than one line. An individual who is related to the~~
18 ~~decedent through [two lines] more than one line of relationship~~
19 ~~[is] shall be entitled to only a single share based on [the] one~~
20 line of relationship [that would entitle the individual to the
21 larger share]. If the shares from the lines of relationship are



1 unequal, the individual shall be entitled to the largest share.
2 The individual and the individual's descendants shall be deemed
3 to have predeceased the decedent with respect to the other line
4 or lines of relationship."

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

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

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

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

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



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

4 ~~(2) Adoption of a child during such child's minority by~~
5 ~~the spouse or reciprocal beneficiary of a natural~~
6 ~~parent of the child, by a natural grandparent, aunt,~~
7 ~~uncle, or sibling of the child or the spouse or~~
8 ~~reciprocal beneficiary of a natural grandparent, aunt,~~
9 ~~uncle, or sibling of the child has no effect on the~~
10 ~~relationship between the child and either natural~~
11 ~~parent, for the limited purpose of interpretation or~~
12 ~~construction of a disposition in any will, trust, or~~
13 ~~other lifetime instrument, whether executed before or~~
14 ~~after the order of adoption, and for the purposes of~~
15 ~~determining the heirs at law of a natural family~~
16 ~~member of the child.~~

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



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

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

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

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

18 (b) For the purpose of intestate succession from or
19 through the deceased child, a parent who is barred from
20 inheriting under this section shall be treated as if the parent
21 predeceased the child.



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

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

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

18
19 ~~If the decedent and the~~
20 ~~spouse were married to~~
21 ~~each other, or the~~



| | | |
|----|--|---|
| 1 | decedent and the reciprocal | |
| 2 | beneficiary were in a | The elective share |
| 3 | relationship. | percentage is: |
| 4 | | |
| 5 | Less than 1 year | Supplemental amount only. |
| 6 | 1 year but less than 2 years | 3% of the augmented estate. |
| 7 | 2 years but less than 3 years | 6% of the augmented estate. |
| 8 | 3 years but less than 4 years | 9% of the augmented estate. |
| 9 | 4 years but less than 5 years | 12% of the augmented estate. |
| 10 | 5 years but less than 6 years | 15% of the augmented estate. |
| 11 | 6 years but less than 7 years | 18% of the augmented estate. |
| 12 | 7 years but less than 8 years | 21% of the augmented estate. |
| 13 | 8 years but less than 9 years | 24% of the augmented estate. |
| 14 | 9 years but less than 10 years | 27% of the augmented estate. |
| 15 | 10 years but less than 11 years | 30% of the augmented estate. |
| 16 | 11 years but less than 12 years | 34% of the augmented estate. |
| 17 | 12 years but less than 13 years | 38% of the augmented estate. |
| 18 | 13 years but less than 14 years | 42% of the augmented estate. |
| 19 | 14 years but less than 15 years | 46% of the augmented estate. |
| 20 | 15 years or more | 50% of the augmented estate. |



1 ~~provided, however, the surviving spouse or reciprocal~~
2 ~~beneficiary may elect to take a share smaller than that to which~~
3 ~~the surviving spouse or reciprocal beneficiary is entitled~~
4 ~~hereunder].~~

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

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

20 "**§560:2-203 Composition of the augmented estate.** (a)
21 Subject to section 560:2-208, the value of the augmented estate,



1 to the extent provided in sections 560:2-204, 560:2-205,
2 560:2-206, and 560:2-207, [~~consists~~] shall consist of the sum of
3 the values of all property, whether real or personal [~~+~~], movable
4 or immovable, tangible or intangible, wherever situated, that
5 constitute the [~~decedent's~~]:

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

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

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

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

15 (b) The value of the marital-property portion of the
16 augmented estate shall consist of the sum of the values of the
17 four components of the augmented estate as determined under
18 subsection (a) multiplied by the following percentage:

- 19 Less than 1 year.....3%
- 20 1 year but less than 2 years.....6%
- 21 2 years but less than 3 years.....12%



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

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

16 "§560:2-205 Decedent's nonprobate transfers to others.

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



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

5 (A) Property over which the decedent alone,
6 immediately before death, held a presently
7 exercisable general power of appointment. The
8 amount included [~~is~~] shall be the value of the
9 property subject to the power, 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;

15 (B) The decedent's fractional interest in property
16 held by the decedent in joint tenancy with the
17 right of survivorship. The amount included [~~is~~]
18 shall be the value of the decedent's fractional
19 interest, to the extent the fractional interest
20 passed by right of survivorship at the decedent's
21 death to a surviving joint tenant other than the



1 decedent's surviving spouse or reciprocal
2 beneficiary;

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

14 (i) [~~the~~] The sum of all the decedent's deposits
15 to the account, including deposit life
16 insurance proceeds added to the account on
17 account of the decedent's death, less all
18 withdrawals made by or for the benefit of
19 the decedent [~~7~~]; by

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



1 (D) Proceeds of insurance, including accidental death
 2 benefits, on the life of the decedent, if the
 3 decedent owned the insurance policy immediately
 4 before death or if and to the extent the decedent
 5 alone and immediately before death held a
 6 presently exercisable general power of
 7 appointment over the policy or its proceeds. The
 8 amount included [~~is~~] shall be the value of the
 9 proceeds, to the extent they were payable at the
 10 decedent's death to or for the benefit of any
 11 person other than the decedent's estate or
 12 surviving spouse or reciprocal beneficiary;

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

15 (A) Any irrevocable transfer in which the decedent
 16 retained the right to the possession or enjoyment
 17 of, or to the income from, the property if and to
 18 the extent the decedent's right terminated at or
 19 continued beyond the decedent's death. The
 20 amount included [~~is~~] shall be the value of the
 21 fraction of the property to which the decedent's



1 right related, to the extent the fraction of the
2 property passed outside probate to or for the
3 benefit of any person other than the decedent's
4 estate or surviving spouse or reciprocal
5 beneficiary; or

6 (B) Any transfer in which the decedent created a
7 power over income or property, exercisable by the
8 decedent alone or in conjunction with any other
9 person, or exercisable by a nonadverse party, to
10 or for the benefit of the decedent, creditors of
11 the decedent, the decedent's estate, or creditors
12 of the decedent's estate. The amount included
13 with respect to a power over ~~[property is]~~:

14 (i) Property shall be the value of the property
15 subject to the power~~[,]~~i and ~~[the amount~~
16 ~~included with respect to a power over income~~
17 ~~is]~~

18 (ii) Income shall be the value of the property
19 that produces or produced the income,
20 to the extent the power in either case was
21 exercisable at the decedent's death to or for the



1 benefit of any person other than the decedent's
2 surviving spouse or reciprocal beneficiary or to
3 the extent the property passed at the decedent's
4 death, by exercise, release, lapse, [~~in~~] default,
5 or otherwise, to or for the benefit of any person
6 other than the decedent's estate or surviving
7 spouse or reciprocal beneficiary. If the power
8 is a power over both income and property and the
9 preceding sentence produces different amounts,
10 the amount included [~~is~~] shall be the greater
11 amount; and

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

16 (A) Any property that passed as a result of the
17 termination of a right or interest in, or power
18 over, property that would have been included in
19 the augmented estate under paragraph (1) (A), (B),
20 or (C), or under paragraph (2), if the right,
21 interest, or power had not terminated until the



1 decedent's death. The amount included [~~is~~] shall
2 be the value of the property that would have been
3 included under those paragraphs if the property
4 were valued at the time the right, interest, or
5 power terminated, and [~~is~~] shall be included only
6 to the extent the property passed upon
7 termination to or for the benefit of any person
8 other than the decedent or the decedent's estate,
9 spouse or reciprocal beneficiary, or surviving
10 spouse or reciprocal beneficiary. As used in
11 this subparagraph, "termination", with respect to
12 a [~~right~~]:

13 (i) Right or interest in property, occurs when
14 the right or interest terminated by the
15 terms of the governing instrument or the
16 decedent transferred or relinquished the
17 right or interest [~~;~~]; and [~~with respect to~~
18 a power]

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



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

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

15 (C) Any transfer of property, to the extent not
16 otherwise included in the augmented estate, made
17 to or for the benefit of a person other than the
18 decedent's surviving spouse or reciprocal
19 beneficiary. The amount included [~~is~~] shall be
20 the value of the transferred property to the
21 extent the aggregate transfers to any one donee



1 in either of the two years exceeded [~~\$20,000.~~]
2 \$32,000."

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

5 "**§560:2-209 Sources from which elective share payable.**

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

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

16 (2) [~~Amounts~~] The marital-property portion of amounts
17 included in the augmented estate under section
18 560:2-207 [~~up to the applicable percentage thereof.~~
19 ~~For the purposes of this subsection, the "applicable~~
20 ~~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 shall be computed by multiplying the value of the amounts
9 included in the augmented estate under section 560:2-207 by the
10 percentage of the augmented estate set forth in the schedule in
11 section 560:2-203(b), appropriate to the length of the marriage
12 or the 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), are~~] 560:2-205(1), (2), and (3) (B),



1 shall be 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~~] shall be applied so that
5 liability for the unsatisfied balance of the elective-share
6 amount or for the supplemental elective-share amount is
7 equitably apportioned among the recipients of the decedent's
8 probate estate and of that portion of the decedent's nonprobate
9 transfers to others in proportion to the value of their
10 interests therein.

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

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



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

3 SECTION 20. 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 (e) 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~~] shall be presumed to be on behalf of a surviving
18 spouse or reciprocal beneficiary who is an incapacitated person.
19 For purposes of the custodial trust established by this
20 subsection:



- 1 (1) The electing guardian, conservator, or agent [~~is~~
2 shall be the custodial trustee;
- 3 (2) The surviving spouse or reciprocal beneficiary [~~is~~
4 shall be the beneficiary; and
- 5 (3) The custodial trust [~~is~~] shall be deemed to have been
6 created by the decedent spouse or reciprocal
7 beneficiary by written transfer that takes effect at
8 the decedent spouse's or reciprocal beneficiary's
9 death and that directs the custodial trustee to
10 administer the custodial trust as one created for the
11 benefit of an incapacitated beneficiary."

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

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

- 19 (1) If the testator had no child living when the testator
20 executed the will, an omitted after-born or after-
21 adopted child [~~receives~~] shall receive a share in the

1 estate equal in value to that which the child would
2 have received had the testator died intestate, unless
3 the will devised all or substantially all of the
4 estate to [~~the other~~] another parent of the omitted
5 child and that [~~either~~] parent survives the testator
6 and is entitled to take under the will; and

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

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

18 (B) The omitted after-born or after-adopted child
19 [~~is~~] shall be entitled to receive the share of
20 the testator's estate, as limited in subparagraph
21 (A), that the child would have received had the



1 testator included all omitted after-born and
2 after-adopted children with the children to whom
3 devises were made under the will and had given an
4 equal share of the estate to each child;

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

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

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

20 "§560:2-402 Homestead allowance. A decedent's surviving
21 spouse or reciprocal beneficiary [~~is~~] shall be entitled to a



1 homestead allowance of [~~\$15,000~~] \$30,000. If there is no
2 surviving spouse or reciprocal beneficiary, each minor child and
3 each dependent child of the decedent [~~is~~] shall be entitled to a
4 homestead allowance amounting to [~~\$15,000~~] \$30,000 divided by
5 the number of minor and dependent children of the decedent. The
6 homestead allowance [~~is~~] shall be exempt from and has priority
7 over all claims against the estate. [~~Homestead~~] The homestead
8 allowance [~~is~~] shall be in addition to any share passing to the
9 surviving spouse or reciprocal beneficiary or minor or dependent
10 child by the will of the decedent, unless otherwise provided, by
11 intestate succession, or by way of elective share."

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

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



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

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

19 "(a) If the estate is otherwise sufficient, property
20 specifically devised [~~may~~] shall not be used to satisfy rights
21 to homestead allowance or exempt property. Subject to this



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



1 which the personal representative determined or could have
2 determined."

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

5 "§560:2-514 **Contracts concerning succession.** A contract
6 to make a will or devise, or not to revoke a will or devise, or
7 to die intestate, if executed after January 1, 1997, may be
8 established only by:

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

17 The execution of a joint will or mutual wills [~~does~~] shall
18 not create a presumption of a contract not to revoke the will or
19 wills."

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



1 "(b) Substitute gift. If a devisee fails to survive the
2 testator and is a grandparent, a descendant of a grandparent, or
3 a stepchild of either the testator or the donor of a power of
4 appointment exercised by the testator's will, the following
5 shall apply:

6 (1) Except as provided in paragraph (4), if the devise is
7 not in the form of a class gift and the deceased
8 devisee leaves surviving descendants, a substitute
9 gift [~~is~~] shall be deemed to be created in the
10 devisee's surviving descendants. [~~They~~] The devisee's
11 surviving descendants shall take by representation the
12 property to which the devisee would have been entitled
13 had the devisee survived the testator;

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



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

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



- 1 (4) If the will creates an alternative devise with respect
2 to a devise for which a substitute gift is created by
3 paragraph (1) or (2), the substitute gift [~~is~~] shall
4 be superseded by the alternative devise [~~only~~] if
5 [an] :
- 6 (A) The alternative devise is in the form of a class
7 gift and one or more members of the class is
8 entitled to take under the will; or
- 9 (B) The alternate devise is not in the form of a
10 class gift and the expressly designated devisee
11 of the alternative devise is entitled to take
12 under the will;
- 13 (5) Unless the language creating a power of appointment
14 expressly excludes the substitution of the descendants
15 of an appointee for the appointee, a surviving
16 descendant of a deceased appointee of a power of
17 appointment [~~can~~] may be substituted for the appointee
18 under this section, regardless of whether [~~or not~~] the
19 descendant is an object of the power[~~+~~]; and
- 20 (6) In this subsection:



1 "Descendant of a grandparent" means an individual
2 who qualifies as a descendent of a grandparent of the
3 testator or of the donor of a power of appointment
4 under the:

5 (A) Rules of construction applicable to a class gift;

6 or

7 (B) Rules for intestate succession if the devise of
8 exercise of the power is not in the form of a
9 class gift.

10 "Surviving descendants of the deceased devisee"
11 means the descendants of a deceased devisee or class
12 member who would take under a class gift created in
13 the testator's will."

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

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

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



- 1 (2) Any amount of a condemnation award for the taking of
- 2 the property unpaid at death;
- 3 (3) Any proceeds unpaid at death on fire or casualty
- 4 insurance on or other recovery for injury to the
- 5 property; [and]
- 6 (4) Property owned by the testator at death and acquired
- 7 as a result of foreclosure, or obtained in lieu of
- 8 foreclosure, of the security interest for a
- 9 specifically devised obligation[-];
- 10 (5) Any real property or tangible personal property owned
- 11 by the testator at death that the testator acquired as
- 12 a replacement for specifically devised real property
- 13 or tangible personal property; and
- 14 (6) If not covered by paragraphs (1) through (5), a
- 15 pecuniary devise equal to the value as of its date of
- 16 disposition of other specifically devised property
- 17 disposed of during the testator's lifetime but only to
- 18 the extent it is established that ademption would be
- 19 inconsistent with the testator's manifested plan of
- 20 distribution or that at the time the will was made,



1 the date of disposition or otherwise, the testator did
2 not intend ademption of the devise."

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

5 "**§560:2-608 Exercise of power of appointment.** In the
6 absence of a requirement that a power of appointment be
7 exercised by a reference [~~7~~ ~~or by an express~~] or specific
8 reference, to the power, a general residuary clause in a will,
9 or a will making general disposition of all of the testator's
10 property, [~~expresses~~] shall be deemed to express an intention to
11 exercise a power of appointment held by the testator only if:

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

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

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

20 "**§560:2-704 Power of appointment; meaning of specific**
21 **reference requirement.** [~~H~~] A powerholder's substantial



1 compliance with a formal requirement of appointment imposed in a
2 governing instrument [~~creating a power of appointment expressly~~
3 ~~requires that the power be exercised~~] by [a] the donor,
4 including a requirement that the instrument exercising the power
5 of appointment make reference [~~, an express reference,~~] or [a]
6 specific reference [~~,~~] to the power [~~or its source, it is~~
7 ~~presumed that the donor's intention, in requiring that the donee~~
8 ~~exercise the power by making reference to the particular power~~
9 ~~or to the creating instrument, was to prevent an inadvertent~~
10 ~~exercise of the power.~~] shall be sufficient if:

- 11 (1) The powerholder knows of and intends to exercise the
12 power; and
- 13 (2) The powerholder's manner of attempted exercise does
14 not impair a material purpose of the donor in imposing
15 the requirement."

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

18 "(b) Substitute gift. If a beneficiary fails to survive
19 the decedent and is a grandparent, [a] descendant of a
20 grandparent, or [a] stepchild of the decedent, the following
21 shall apply:



- 1 (1) Except as provided in paragraph (4), if the
2 beneficiary designation is not in the form of a class
3 gift and the deceased beneficiary leaves surviving
4 descendants, a substitute gift [~~is~~] shall be deemed to
5 be created in the [beneficiary's] surviving
6 descendants[-] of the deceased beneficiaries. [They]
7 The surviving descendants of the deceased
8 beneficiaries shall take by representation the
9 property to which the beneficiary would have been
10 entitled had the beneficiary survived the decedent;
- 11 (2) Except as provided in paragraph (4), if the
12 beneficiary designation is in the form of a class
13 gift, other than a beneficiary designation to "issue",
14 "descendants", "heirs of the body", "heirs", "next of
15 kin", "relatives", or "family", or a class described
16 by language of similar import, a substitute gift [~~is~~]
17 shall be deemed to be 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 decedent [~~passes~~] shall
21 pass to the surviving beneficiaries and the surviving



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

14 (3) For the purposes of section 560:2-701, words of
15 survivorship, such as in a beneficiary designation to
16 an individual "if he survives me", or in a beneficiary
17 designation to "my surviving children", [~~are~~] shall
18 not, in the absence of additional evidence, be a
19 sufficient indication of an intent contrary to the
20 application of this section; [~~and~~]



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

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

10 (B) The alternative beneficiary designation is not in
11 the form of a class gift and an expressly
12 designated beneficiary of the alternative
13 beneficiary designation is entitled to take[-];
14 and

15 (5) As used in this subsection:

16 "Descendant of a grandparent" means an individual
17 who qualifies as a descendant of a grandparent of the
18 decedent under the:

19 (A) Rules of construction applicable to a class gift
20 created in the decedent's beneficiary designation



1 if the beneficiary designation is in the form of
2 a class gift; or

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

5 "Surviving descendants of the deceased
6 beneficiaries" means the descendants of deceased
7 beneficiaries or class member who would take under a
8 class gift created in the beneficiary designation."

9 SECTION 31. Section 560:2-707, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Survivorship required; substitute gift. A future
12 interest under the terms of a trust executed after January 1,
13 1997 [~~is~~], shall be contingent on the beneficiary's surviving
14 the distribution date. If a beneficiary of a future interest
15 under the terms of a trust fails to survive the distribution
16 date, the following shall apply:

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



1 deceased beneficiaries. ~~[They]~~ The surviving
2 descendants of the deceased beneficiaries shall take
3 by representation the property to which the
4 beneficiary would have been entitled had the
5 beneficiary survived the distribution date;

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



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

9 (3) For the purposes of section 560:2-701, words of
10 survivorship attached to a future interest [~~are~~] shall
11 not, in the absence of additional evidence, be a
12 sufficient indication of an intent contrary to the
13 application of this section. Words of survivorship
14 include words of survivorship that relate to the
15 distribution date or to an earlier or an unspecified
16 time, whether those words of survivorship are
17 expressed in condition-precedent, condition-
18 subsequent, or any other form; and

19 (4) If a governing instrument creates an alternative
20 future interest with respect to a future interest for
21 which a substitute gift is created by paragraph (1) or



1 (2), the substitute gift [~~is~~] shall be superseded by
2 the alternative future interest [~~only~~] if [~~an~~]:

3 (A) The alternative future interest is in the form of
4 a class gift and one or more members of the class
5 is entitled to take in possession or enjoyment;
6 or

7 (B) The alternative future interest is not in the
8 form of a class gift and the expressly designated
9 beneficiary of the alternative future interest is
10 entitled to take in possession or enjoyment.

11 As used in this subsection, "surviving descendants of the
12 deceased beneficiaries" means the descendants of deceased
13 beneficiaries or class members who would take under a class gift
14 created in the trust."

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

17 "(a) Definitions. In this section:

18 "Disposition or appointment of property" includes a
19 transfer of an item of property or any other benefit to a
20 beneficiary designated in a governing instrument.



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

7 "Divorced individual" includes an individual whose marriage
8 has been annulled.

9 "Governing instrument" means a governing instrument
10 executed by:

11 (1) A divorced individual before the divorce or annulment
12 of the individual's marriage to the individual's
13 former spouse; or

14 (2) An individual who is a former reciprocal beneficiary
15 before the termination of the reciprocal beneficiary
16 relationship with the individual's former reciprocal
17 beneficiary.

18 "Relative of the divorced individual's former spouse" means
19 an individual who is related to the divorced individual's former
20 spouse by [~~blood,~~] application of the rules establishing
21 parent-child relationships under subpart of part 1 or



1 affinity and who, after the divorce or annulment, is not related
2 to the divorced individual by [~~blood, adoption,~~] application of
3 the rules establishing parent-child relationships under
4 subpart _____ of part 1 or affinity.

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

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

18 (2) An individual who is a former reciprocal beneficiary,
19 at the time of the termination, was alone empowered,
20 by law or under the governing instrument, to cancel
21 the designation in favor of the individual's former



1 partner or former partner's relative, regardless of
 2 whether [~~or not~~] the individual was then empowered to
 3 designate the individual's self in place of the
 4 individual's former partner or in place of the
 5 individual's former partner's relative and regardless
 6 of whether [~~or not~~] the individual who is the former
 7 reciprocal beneficiary then had the capacity to
 8 exercise the power.

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

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

13 "**§560:3-108 Probate, testacy and appointment proceedings;**
 14 **ultimate time limit.** (a) No [~~informal~~] probate [~~or~~
 15 ~~appointment~~] proceeding [~~or formal testacy or~~] to establish a
 16 will and related appointment proceeding, other than [a] an
 17 ancillary proceeding [~~to probate a will previously probated at~~
 18 ~~the testator's domicile and appointment proceedings relating to~~
 19 ~~an estate in which there has been a prior appointment, may],
 20 shall be commenced more than five years after the decedent's
 21 death[~~, except~~]; provided that:~~



- 1 (1) If a previous proceeding was dismissed because of
2 doubt about the fact of the decedent's death,
3 appropriate probate [~~, appointment, or testacy~~]
4 proceedings may be maintained at any time thereafter
5 upon a finding that the decedent's death occurred
6 before the initiation of the previous proceeding and
7 the applicant or petitioner has not delayed unduly in
8 initiating the subsequent proceeding;
- 9 (2) Appropriate probate [~~, appointment, or testacy~~]
10 proceedings may be maintained in relation to the
11 estate of an absent, disappeared, or missing person
12 for whose estate a conservator has been appointed, at
13 any time within three years after the conservator
14 becomes able to establish the death of the protected
15 person;
- 16 (3) A formal probate proceeding to contest an informally
17 probated will and to secure appointment of the person
18 with legal priority for appointment if the contest is
19 successful, may be commenced within:
- 20 (A) Ninety days after receiving notice of an informal
21 proceeding pursuant to section 560:3-306;



1 (B) Twelve months from the date the will was
2 informally admitted to probate; or
3 (C) Thirty days from the entry of a formal order
4 approving the accounts and settlement of the
5 estate by an informally appointed personal
6 representative,
7 whichever time period expires first. If an informal
8 proceeding is closed informally, the court in its
9 discretion may allow a will contest to proceed after
10 the limitations period has expired if it determines
11 that notice of the informal probate proceedings was
12 not provided pursuant to section 560:3-306 and not
13 more than five years has elapsed since the decedent's
14 death;

15 ~~[(4) An informal appointment or a formal testacy or~~
16 ~~appointment proceeding may be commenced thereafter if~~
17 ~~no proceedings concerning the succession or estate~~
18 ~~administration have occurred within the five year~~
19 ~~period after decedent's death, but the personal~~
20 ~~representative has no right to possess estate assets~~
21 ~~as provided in section 560:3-709 beyond that necessary~~



1 ~~to confirm title thereto in the successors to the~~
2 ~~estate and claims other than expenses of~~
3 ~~administration may not be presented against the~~
4 ~~estate,] and~~

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

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

19 (B) The terms of the decedent's will provide for a
20 distribution to the decedent's revocable living
21 trust;



1 (C) Newly discovered assets of the decedent require
2 administration; or

3 (D) All interested parties who are entitled by
4 statute to notice of the petition join in the
5 petition.

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

13 ~~[(b)]~~ (c) These limitations ~~[(d)]~~ shall not apply to
14 proceedings to construe probated wills or determine heirs of an
15 intestate.

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



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

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

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

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

19 (1) Every application for informal probate of a will or
20 for informal appointment of a personal representative,



1 other than a special or successor representative,
2 shall contain the following:

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

7 (B) The name [7] and date of death of the decedent,
8 the decedent's age, [~~and~~] the county and state of
9 the decedent's domicile at the time of death, and
10 the names and addresses of the spouse or
11 reciprocal beneficiary, children, heirs, and
12 devisees and the ages of any who are minors so
13 far as known or ascertainable with reasonable
14 diligence by the applicant;

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

18 (D) A statement identifying and indicating the
19 address of any personal representative of the
20 decedent appointed in this State or elsewhere
21 whose appointment has not been terminated;



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

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

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

17 (A) That the original of the decedent's last will is
18 in the possession of the court, or accompanies
19 the application, or that an authenticated copy of
20 [a] an original will probated, filed, deposited,



1 or lodged in another jurisdiction accompanies the
2 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 [7] or [7] 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 36. 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 regardless of whether [~~or not~~] the person was a witness to the
8 will.

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

15 (e) A will from a place [~~which~~] that does not provide for
16 probate of a will after death and [~~which~~] that is not eligible
17 for probate under subsection (a) [~~7~~] may be probated in this
18 State upon receipt by the registrar of a duly authenticated copy
19 of the will and a duly authenticated certificate of its legal
20 custodian that the copy filed is a true copy and that the will
21 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 37. Section 560:3-406, Hawaii Revised Statutes, is
8 amended to read as follows:

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

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



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

- 4 (1) If the will is self-proved pursuant to section
5 560:2-504, the will shall be deemed to satisfy the
6 requirements for execution without the testimony of
7 any attesting witness, upon filing the will and the
8 acknowledgement and affidavits annexed or attached to
9 it, unless there is evidence of fraud or forgery
10 affecting the acknowledgment or affidavit; and
11 (2) If the will is witnessed pursuant to section
12 560:2-502(a)(3), but not self-proved, the testimony of
13 at least one of the attesting witnesses shall be
14 required to establish proper execution if within this
15 State, competent, and able to testify. Proper
16 execution may be established by other evidence,
17 including an affidavit of an attesting witness. An
18 attestation clause that is signed by the attesting
19 witnesses shall raise a rebuttable presumption that
20 the events received in the clause occurred."



1 SECTION 38. 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~~] shall be required, but the
11 requirement [~~ceases~~] shall cease if the person demanding bond
12 ceases to be interested in the estate, or if bond is excused as
13 provided in section 560:3-603 or 560:3-604. After the personal
14 representative has received notice and until the filing of the
15 bond or cessation of the requirement of bond, the personal
16 representative shall refrain from exercising any powers of the
17 office except as necessary to preserve the estate. Failure of
18 the personal representative to meet a requirement of bond by
19 giving suitable bond within thirty days after receipt of notice
20 [~~is~~] shall be cause [~~of~~] for the personal representative's
21 removal and appointment of a successor personal representative."



1 SECTION 39. 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~~] shall
8 be under a duty to settle and distribute the estate of the
9 decedent in accordance with the terms of any probated and
10 effective will and this chapter, and as expeditiously and
11 efficiently as is consistent with the best interests of the
12 estate. The personal representative shall use the authority
13 conferred upon the personal representative by this chapter, the
14 terms of the will, if any, and any order in proceedings to which
15 the personal representative is party for the best interests of
16 successors to 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 shall be authority to administer and distribute the estate



1 according to its terms. An order of appointment of a personal
2 representative, whether issued in informal or formal
3 proceedings, [~~is~~] shall be authority to distribute apparently
4 intestate 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~~] shall not affect the
11 duty of the personal representative to administer and distribute
12 the estate in accordance with the rights of claimants [~~7~~] whose
13 claims have been allowed, the surviving spouse or reciprocal
14 beneficiary, 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~~]
20 shall have the same standing to sue and be sued in the courts of



1 this State and the courts of any other jurisdiction as the
2 decedent had immediately [~~prior to~~] before death.

3 (d) A personal representative shall not be surcharged for
4 a distribution that does not take into consideration the
5 possibility of posthumous pregnancy unless the personal
6 representative, no 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 40. 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~~] shall be entitled to receive from the estate
18 [~~that person's necessary~~] reasonable costs, expenses, and
19 disbursements, including reasonable attorneys' fees [~~incurred~~],
20 regardless of whether counsel has been retained on a contingency
21 fee basis."



1 SECTION 41. 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 42. 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~~] that arose before the death of the decedent,
20 including claims of the State and any subdivision thereof,
21 whether due or to become due, absolute or contingent, liquidated



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

14 whichever period in subparagraph (A) or (B) expires
15 later; or

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

20 SECTION 43. Section 560:3-806, Hawaii Revised Statutes, is
21 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]~~ shall not change a
9 disallowance of a claim after the time for the claimant to file
10 a petition for allowance or to commence a proceeding on the
11 claim has run and the claim has been barred. Every claim
12 ~~[which]~~ that is disallowed in whole or in part by the personal
13 representative ~~[is]~~ shall be barred so far as not allowed unless
14 the claimant files a petition for allowance in the court or
15 commences a proceeding against the personal representative ~~[not]~~
16 no later than sixty days after the ~~[mailing]~~ service of the
17 notice of disallowance or partial allowance if the notice warns
18 the claimant of the impending bar. If the notice does not warn
19 the claimant of the impending sixty-day bar, then the claim
20 shall be barred if no petition for allowance or other proceeding
21 on the claim has been brought within eighteen months of the date



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

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

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

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

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

19 Persons receiving money or property for the disabled person
20 [~~are~~] shall be obligated to apply the money or property to the
21 support of that person, but [~~may~~] shall not pay themselves



1 except by way of reimbursement for out-of-pocket expenses for
2 goods and services necessary for the support of the disabled
3 person. Excess sums [~~must~~] shall be preserved for future
4 support of the disabled person. The personal representative
5 [~~is~~] shall not be responsible for the proper application of
6 money or property distributed pursuant to this subsection."

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

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

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

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



1 ~~["§560:2-108 Afterborn heirs. An individual in gestation~~
2 ~~at a particular time is treated as living at that time if the~~
3 ~~individual lives one hundred twenty hours or more after birth."]~~

4 SECTION 47. Section 560:3-916, Hawaii Revised Statutes, is
5 repealed.

6 ~~["§560:3-916 Apportionment of estate taxes. (a) For~~
7 ~~purposes of this section:~~

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

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

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

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



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

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

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

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



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

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

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

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

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



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



- 1 ~~(2) If property held by the personal representative is~~
2 ~~distributed prior to final apportionment of the tax,~~
3 ~~the distributee shall provide a bond or other security~~
4 ~~for the apportionment liability in the form and amount~~
5 ~~prescribed by the personal representative.~~
- 6 ~~(f)(1) In making an apportionment, allowances shall be made~~
7 ~~for any exemptions granted, any classification made of~~
8 ~~persons interested in the estate and for any~~
9 ~~deductions and credits allowed by the law imposing the~~
10 ~~tax;~~
- 11 ~~(2) Any exemption or deduction allowed by reason of the~~
12 ~~relationship of any person to the decedent or by~~
13 ~~reason of the purposes of the gift inures to the~~
14 ~~benefit of the person bearing such relationship or~~
15 ~~receiving the gift; but if an interest is subject to a~~
16 ~~prior present interest which is not allowable as a~~
17 ~~deduction, the tax apportionable against the present~~
18 ~~interest shall be paid from principal;~~
- 19 ~~(3) Any deduction for property previously taxed and any~~
20 ~~credit for gift taxes or death taxes of a foreign~~
21 ~~country paid by the decedent or the decedent's estate~~



1 ~~inures to the proportionate benefit of all persons~~
2 ~~liable to apportionment;~~

3 ~~(4) Any credit for inheritance, succession or estate taxes~~
4 ~~or taxes in the nature thereof applicable to property~~
5 ~~or interests includable in the estate, inures to the~~
6 ~~benefit of the persons or interests chargeable with~~
7 ~~the payment thereof to the extent proportionately that~~
8 ~~the credit reduces the tax;~~

9 ~~(5) To the extent that property passing to or in trust for~~
10 ~~a surviving spouse or reciprocal beneficiary or any~~
11 ~~charitable, public or similar purpose is not an~~
12 ~~allowable deduction for purposes of the tax solely by~~
13 ~~reason of an inheritance tax or other death tax~~
14 ~~imposed upon and deductible from the property, the~~
15 ~~property is not included in the computation provided~~
16 ~~for in subsection (b), and to that extent no~~
17 ~~apportionment is made against the property. The~~
18 ~~sentence immediately preceding does not apply to any~~
19 ~~case if the result would be to deprive the estate of a~~
20 ~~deduction otherwise allowable under section 2053(d) of~~
21 ~~the Internal Revenue Code of 1986, as amended, of the~~



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

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

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



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

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

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



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

3 PART V

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

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

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

13 SECTION 51. This Act shall take effect upon its approval;
14 provided that section 5 of this Act shall take effect on July 1,
15 2023.



Report Title:

Judiciary Package; Probate Code

Description:

Updates articles I through IV of the Uniform Probate Code to adjust for inflation, provide additional clarity, resolve issues that have arisen in probate practice, and address societal changes in familial relations. (CD1)

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

