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# A BILL FOR AN ACT

RELATING TO THE UNIFORM PROBATE CODE.

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

1           SECTION 1. The legislature finds that guardianship and  
2 conservatorship proceedings under chapter 560, Hawaii Revised  
3 Statutes, involve matters of a sensitive and private nature for  
4 individuals whose capacity or incapacity becomes the subject of  
5 those court proceedings. A court's determination of a person's  
6 ability to receive and evaluate information, or to make or  
7 communicate decisions, to meet essential requirements for  
8 physical health, safety, or self-care necessarily involves  
9 judicial review of reports, information, evaluations, and  
10 medical records filed in judicial proceedings that describe a  
11 person's mental or physical condition, diagnosis, and prognosis,  
12 among other items of a highly personal and intimate nature.

13           The legislature further finds that court records and  
14 judicial proceedings are presumptively open to the public unless  
15 a compelling reason exists to restrict public access.  
16 Accordingly, the purpose of this Act is to amend the procedure  
17 for sealing documents filed in guardianship and conservatorship



1 proceedings to better protect an individual's right to privacy.  
2 This Act distinguishes between certain vital records that are  
3 sealed upon filing by default and other highly sensitive  
4 materials, such as medical records and professional evaluations,  
5 for which this Act establishes a procedure for temporary sealing  
6 upon filing until a court hearing can be held to determine  
7 whether a compelling interest justifies restricting public  
8 access. These amendments are recommended by the state  
9 judiciary's committee on the uniform probate code and probate  
10 court practices, a group consisting of probate judges and  
11 attorneys who practice in the field of probate, trust, and  
12 guardianship law.

13 SECTION 2. Section 560:1-311, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~[+]~~**§560:1-311**~~[+]~~ **Documents sealed upon filing.** [~~FN~~] (a)  
16 This section applies to the sealing of documents filed in any  
17 action or proceeding under this chapter [~~in the circuit court~~  
18 ~~having jurisdiction in matters relating to the affairs of~~  
19 ~~decedents, the].~~

20 (b) The following documents shall be sealed upon filing:

21 (1) Birth certificate;



- 1 (2) Marriage certificate;  
2 (3) Death certificate; and  
3 (4) Tax return~~[+]~~.

4 The foregoing documents shall remain sealed unless otherwise  
5 ordered by the court.

6 (c) The following documents shall be temporarily filed  
7 under seal pending a court hearing to determine whether the  
8 documents should remain sealed or be unsealed:

- 9 ~~[(5)]~~ (1) Kokua kanawai's report;  
10 ~~[(6)]~~ (2) Court-ordered professional evaluation; ~~[and]~~  
11 ~~[(7)]~~ (3) Responses and objections to a kokua kanawai's  
12 report or a professional evaluation~~[+]~~;  
13 (4) Physician's letter or medical records regarding a  
14 person's inability to receive and evaluate  
15 information, or to make or communicate decisions, to  
16 meet essential requirements for physical health,  
17 safety, or self-care; and  
18 (5) Physician's letter or medical records regarding a  
19 person's inability to manage property and business  
20 affairs effectively because of an impairment in the  
21 person's ability to receive and evaluate information



1           or make or communicate decisions because of another  
2           physical, mental, or health impairment.

3 ~~[The foregoing documents shall remain sealed unless otherwise~~  
4 ~~ordered by the court; provided that the clerk, without further~~  
5 ~~court order, may unseal and provide a copy of a report or~~  
6 ~~evaluation pursuant to section 560:5-307 or 560:5-407.]"~~

7           SECTION 3. Section 560:5-307, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "**§560:5-307 Confidentiality of records.** The [~~written~~  
10 ~~report of a kokua kanawai and any professional evaluation]~~  
11 documents enumerated under section 560:1-311(c) are confidential  
12 ~~[and shall be sealed upon filing,]~~ but are available to:

- 13           (1) The court;
- 14           (2) The respondent without limitation as to use;
- 15           (3) [~~The petitioner,~~] All parties named in the petition  
16 under section 560:5-304(b), the kokua kanawai, any  
17 nominated guardian, and the petitioner's, nominated  
18 guardian's, and respondent's lawyers, for purposes of  
19 the proceeding; and
- 20           (4) Other persons for any purposes that the court may  
21 order for good cause."



1 SECTION 4. Section 560:5-407, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§560:5-407 Confidentiality of records.** The [~~written~~  
4 ~~report of a kokua kanawai and any professional evaluation~~]  
5 documents enumerated under section 560:1-311(c) are confidential  
6 [~~and shall be sealed upon filing,~~] but shall be available to:

7 (1) The court;

8 (2) The respondent without limitation as to use;

9 (3) [~~The petitioner,~~] All parties named in the petition  
10 under section 560:5-403(b) and (c), the kokua kanawai,  
11 any nominated conservator, and the petitioner's,  
12 nominated conservator's, and respondent's lawyers, for  
13 purposes of the proceeding; and

14 (4) Other persons for any purposes that the court may  
15 order for good cause."

16 SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

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**Report Title:**

Judiciary Package; Uniform Probate Code; Guardianship and Conservatorship Proceedings; Sealing of Medical Records and Professional Evaluations

**Description:**

Provides for the temporary sealing of certain medical records and professional evaluations filed in guardianship and conservatorship proceedings pending a judicial determination on the need for continued sealing. (SD1)

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

