

ACT 144

S.B. NO. 1074

A Bill for an Act Relating to the Uniform Probate Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 1-108 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 1-108 Facts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. The trustee of an inter vivos trust shall not be required to register the trust, reveal the terms to beneficiaries, or account to beneficiaries, unless otherwise directed by the settlor; provided, however, the trustee shall only be relieved from the duty to register and to keep beneficiaries informed during the life of the settlor."

SECTION 2. Paragraph (a) of Section 1-401 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 1-401 Notice; method and time of giving. (a) If notice is required and except for specific notice requirements as otherwise provided, the applicant or petitioner shall cause notice to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney.

Notice shall be given:

- (1) By mailing a copy thereof at least fourteen days before the time set for the hearing by first class mail, postage prepaid, addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known; or
- (2) If the person notified pursuant to paragraph (1) above does not either appear at the time set for appearance or acknowledge receipt of the notice in writing, by personal service or delivery or any means by which the person entitled to notice receipts for a copy thereof, at least fourteen days before the time set for the hearing or the registrar's action; or
- (3) If notice cannot be effected pursuant to paragraphs (1) and (2) above, or if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the judicial circuit where the hearing is to be held or the probate proceedings are being maintained, the last publication of which is to be at least ten days before the time set for either the hearing or the registrar's action."

SECTION 3. Section 2-102 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 2-102 Share of the spouse. The intestate share of the surviving spouse is:

- (1) If there is no surviving issue or parent of the decedent, the entire intestate estate;
- (2) If there is surviving issue or parent of the decedent, one-half of the intestate estate."

SECTION 4. Section 2-103 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 2-103 Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under section 2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

- (1) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (2) If there is no surviving issue, to his parent, or parents equally;
- (3) If there is no surviving issue or parent, to the issue of the parents or either of them; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (4) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, the estate passes either in equal shares to the grandparents, or to the surviving grandparent, or in equal shares to the issue of equal degree of the grandparents if all grandparents are deceased, but no person shall be entitled by right of representation to the shares of the issue of the grandparents who have died; provided, that to the extent to which

the estate comes from either set of grandparents of the decedent, those grandparents or their issue shall take to the exclusion of the other set of grandparents or their issue regardless of the degree of kinship unless this provision would cause an escheat to the State;

- (5) If there is no surviving issue, parent, issue of a parent, grandparent or issue of a grandparent, the estate passes either in equal shares to the great-grandparents, or to the surviving great-grandparent, or in equal shares to the issue of equal degree of the great-grandparents if all great-grandparents are deceased, but no person shall be entitled by right of representation to the shares of the issue of the great-grandparents who have died; provided, that to the extent to which the estate comes from either set of great-grandparents of the decedent, those great-grandparents or their issue shall take to the exclusion of the other set of great-grandparents or their issue regardless of the degree of kinship unless this provision would cause an escheat to the State."

SECTION 5. Section 2-205 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 2-205 Proceeding for elective share and dower; time limit. (a) The surviving spouse may elect to take his or her share in the net estate and her dower interest, if any, arising under section 533-1 by filing in the court and mailing or delivering to the personal representative a petition for the elective share and dower, if any, within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the administration of the estate has been closed and the personal representative discharged. If the election has not been made before such closing and discharge, the spouse shall be conclusively presumed to have elected not to take his or her elective share and dower, if any.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate.

(c) The surviving spouse may withdraw his or her demand for an elective share and dower, if any, at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and dower, if any, and shall order its payment or distribution from the assets of the net estate in the case of the elective share and from such assets as may be subject thereto in the case of dower."

SECTION 6. Section 2-206 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 2-206 Effect of election on benefits by will or statute. A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and dower, if any, arising under section 533-1. A surviving spouse's election to take an elective share and dower, if any, precludes the surviving spouse from taking a testamentary bequest unless it plainly appears by the will to have been the intention of the testator that the surviving spouse should have the testamentary

bequest in addition to the elective share and dower, if any.”

SECTION 7. Section 2-207 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“Sec. 2-207 Charging spouse with gifts received; liability of others for balance of elective share and dower. (a) In the proceeding for an elective share and dower, if any, arising under section 533-1, property which is part of the net estate which passes to the surviving spouse by testate or intestate succession, or which would have so passed to the spouse but is renounced, is applied first to satisfy the elective share and dower, if any, and to reduce the amount due from the remaining estate.

(b) Remaining property of the net estate is so applied that liability for the balance of the elective share and dower, if any, of the surviving spouse is equitably apportioned among the recipients of the net estate in proportion to the value of their interests therein.”

SECTION 8. Section 2-403 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“Sec. 2-403 Family allowance. In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this State, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance has priority as specified in section 3-805.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.”

SECTION 9. Section 2-404 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“Sec. 2-404 Source, determination and documentation. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the

ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined."

SECTION 10. Section 2-508 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 2-508 Revocation by divorce; no revocation by other changes of circumstances. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, guardian of the property, or guardian of the person, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. Remarriage to a former spouse shall not receive any provision previously revoked by operation of this section. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 2-802 (b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No changes of circumstances other than as described in this section revokes a will."

SECTION 11. Section 2-902 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 2-902 Duty of custodian of will; liability. After the death of a testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who wilfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court."

SECTION 12. Section 3-108 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-108 Probate proceedings; ultimate time limit. (a) No probate proceeding seeking to establish a will, other than an ancillary proceeding, may be commenced more than five years after the decedent's death except under the following conditions and circumstances:

- (1) If a previous probate proceeding was dismissed because of doubt about the fact of the decedent's death, a probate proceeding may be commenced at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous probate proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; or
- (2) A probate proceeding may be commenced in relation to the estate of an absent, disappeared or missing person for whose estate a guardian of the property has been appointed, at any time within three years after the guardian of the property becomes able to establish the death of the protected person; or
- (3) A formal testacy proceeding or a supervised administration may be commenced by an adult on or before his nineteenth birthday if (i) he is a devisee of or an heir to property of the decedent under the proceedings which he intends to commence, (ii) he was under the age of majority when he had a meaningful opportunity to contest any prior probate proceeding concerning the decedent, and (iii) his interest was not adequately represented by another party having a substantially identical interest in any prior probate proceeding concerning the decedent; or
- (4) A formal testacy proceeding or a supervised administration may be commenced within twelve months after the petitioner learns of a prior probate proceeding in which an order of probate or an adjudication of intestacy was entered if the petitioner (i) is a devisee of or an heir to property of the decedent under the proceedings which he intends to commence, and (ii) did not receive notice pursuant to section 1-401 of the commencement of the prior probate proceeding, and if the petitioner's interest was not adequately represented by another party having a substantially identical interest in the prior probate proceeding.

(b) A probate proceeding seeking an adjudication of intestacy may be commenced at any time unless there has been a prior probate proceeding concerning the decedent's estate, in which event a formal testacy proceeding or a supervised administration seeking an adjudication of intestacy may be commenced only under the conditions and circumstances set forth in subparagraphs (a) (3) and (4) above.

(c) A prior probate proceeding determining heirs by intestacy shall not be res judicata as to any subsequent proceedings unless the notice provisions of section 1-401 are complied with as to the person asserting heirship.

(d) Unless additional time is permitted under paragraphs (a) and (b) above and except as provided in section 3-503, a proceeding to contest the determination of the testacy status of the decedent made in an informal proceeding must be commenced within the later of twelve months from the close of the informal proceedings or three years from the date of the decedent's death."

SECTION 13. Paragraph (a) of Section 3-203 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-203 Priority among persons seeking appointment as personal

representative. (a) Whether the proceedings are formal or informal, persons who are qualified under section 3-601 have priority for appointment in the following order:

- (1) The person with priority as determined by a will including a person nominated by a power conferred in a will;
- (2) The surviving spouse of the decedent who is a devisee of the decedent;
- (3) Children of the decedent who are devisees;
- (4) Other devisees of the decedent;
- (5) The surviving spouse of the decedent;
- (6) Children of the decedent;
- (7) Other heirs of the decedent;
- (8) Forty-five days after the death of the decedent, any creditor;
- (9) The clerk of the court if none of the above are willing to so serve."

SECTION 14. Section 3-301 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-301 Testate informal probate and intestate informal appointment proceedings; limits on value of estate; contents of application; notice. (a) Informal probate and appointment proceedings shall be available only if the estate of the decedent subject to probate proceedings in this State has a gross value of \$30,000 or less.

(b) Applications for informal probate or informal appointment shall be directed to the registrar, and shall be verified by the applicant to be accurate and complete to the best of his knowledge and belief as follows:

- (1) Every application for informal probate of a will and appointment of a personal representative or for informal appointment of a personal representative in the case of intestacy, other than a special or successor representative, shall contain the following:
 - (i) A statement of the interest of the applicant;
 - (ii) The name, and date of death of the decedent, his date of birth, and the county and state of his domicile at the time of death, and, so far as known or ascertainable with reasonable diligence by the applicant, the names and addresses of the spouse, children, heirs and devisees and the dates of birth of any who are minors;
 - (iii) If the decedent was not domiciled in the State at the time of his death, a statement showing venue;
 - (iv) A statement identifying and indicating the address and state in which appointed of any personal representative of the decedent whose appointment has not been terminated;
 - (v) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere, and, as to any such demand the names and addresses of the demandants;
 - (vi) A statement indicating that the time limit for informal

probate proceedings as provided in section 3-108 has not expired;

- (vii) A statement of the nature and value of the estate of the decedent subject to probate proceedings in this State;
 - (viii) A statement setting forth any request known to the applicant for homestead allowance, exempt property (in which case the specific items of property and their value shall be itemized) and family allowance under Article II, Part 4;
 - (ix) The name, address, and priority of appointment of the person whose appointment as personal representative is sought, a statement that the nominee is qualified to serve as such under section 3-601, and the names of any other persons having a prior or equal right to appointment under section 3-203; and
 - (x) If there are any persons listed under subparagraph (ix) above who have a prior or equal right to appointment, a statement in which they renounce their priority or concur in the nomination of the person seeking appointment.
- (2) An application for informal probate of a will and appointment of a personal representative shall state the following in addition to the statements required by (1):
- (i) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
 - (ii) That the applicant, to the best of his knowledge, believes the will to have been validly executed;
 - (iii) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will; and
 - (iv) That the applicant believes that the instrument which is the subject of the application is the decedent's last will and is not one of a series of testamentary instruments, the latest of which does not expressly revoke the earlier.
- (3) An application for informal appointment of a personal representative in the case of intestacy shall state in addition to the statements required by (1) that, after exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 1-301, or, a statement why any such instrument of which he may be aware is not being probated.
- (4) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the nominee.

(c) Notice of the application shall be effected by delivering a copy of the application in any manner provided in section 1-401 to the persons enumerated in subparagraph (b) (1) (v) above and in section 3-403. Unless required under section 1-401, published notice of the commencement of the proceedings is not required. The application shall be accompanied by a statement to the effect that, if the recipient has an objection to the informal probate or to the granting of the requested statutory allowances or exempt property, he may file a petition for a formal testacy proceeding, and that, if any such petition is filed within fourteen days of the mailing or delivery of the notice, no action will be taken by the registrar on the informal application.

(d) Published notice, if any, of the application shall contain the following information:

- (1) Name and date of death of the decedent;
- (2) Name and address of nominee for personal representative;
- (3) Name and address of applicant;
- (4) Applicant's estimate of the value of the decedent's estate subject to probate proceedings in this State;
- (5) Total value of requests for homestead and family allowances and exempt property;
- (6) A statement to the effect that, if the noticed person has an objection to the informal probate or to the granting of the requested statutory allowances and exempt property, he may file a petition for a formal testacy proceeding within forty days after the date of first publication; and
- (7) A statement to the effect that, if the noticed person desires any further notice concerning the estate, including notice concerning the closing and distribution of the estate, he must file a demand for notice under section 3-204.

(e) By verifying an application, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him."

SECTION 15. Paragraph (a) of Section 3-302 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-302 Testate informal probate proceedings: duty of registrar; effect of informal probate and appointment. (a) Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 3-303, shall issue a written statement admitting the will to informal probate, granting any request for statutory allowances and exempt property, and appointing a personal representative subject to acceptance if at least fourteen days have passed after the last mailing or other delivery of notice, if proof that notice has been given is filed with the registrar and if no petition for formal testacy proceedings has been filed; provided, however, if published notice is required by section 1-401 (a) (3), the registrar shall delay any action hereunder until the later of fourteen days after the last mailing or other delivery of notice or forty days after the first publication of notice."

SECTION 16. Paragraphs (a) and (b) of Section 3-303 of Section 1, Act

200, Session Laws of Hawaii 1976 are amended to read as follows:

"Sec. 3-303 Testate informal probate proceedings: proof and findings required. (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

- (1) The application is complete;
- (2) The application states that the value of the estate is \$30,000 or less;
- (3) The applicant has made oath or affirmation that the statements contained in the application are accurate and complete to the best of his knowledge and belief;
- (4) The applicant appears from the application to be an interested person as defined in section 1-201 (24);
- (5) Any requested statutory allowances or exempt property are proper;
- (6) The person nominated as personal representative has priority and is qualified to serve as such;
- (7) On the basis of the statements in the application venue is proper;
- (8) An original, duly executed and apparently unrevoked will or a certified copy of one probated elsewhere is in the registrar's possession;
- (9) Notice required by sections 3-204 and 3-301 has been given;
- (10) The application is not within section 3-304; and
- (11) It appears from the application that the time limit contained in section 3-108 either has not expired or, in the case of an ancillary proceeding, is not applicable.

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

SECTION 17. Paragraph (a) of Section 3-307 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-307 Intestate informal appointment proceedings; delay in order; duty of registrar; effect of appointment. (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 3-614, the registrar, after making the findings required by section 3-308, shall appoint the nominee subject to acceptance.

SECTION 18. Paragraph (a) of Section 3-308 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-308 Intestate informal appointment proceedings; proof and findings required. (a) In an intestate informal appointment proceeding, the registrar shall determine whether:

- (1) The application is complete;
- (2) The value of the estate is \$30,000 or less;
- (3) The applicant has made oath or affirmation that the statements contained in the application are accurate and complete to the best of his knowledge and belief;
- (4) The applicant appears from the application to be an interested person

as defined in section 1-201 (24);

- (5) Any requested statutory allowances or exempt property are proper;
- (6) The person nominated as personal representative has priority and is qualified to serve as such;
- (7) On the basis of the statements in the application, venue is proper;
- (8) Notice required by sections 3-204 and 3-301 has been given; and
- (9) It appears from the application that the time limit contained in section 3-108 either has not expired or, in the case of ancillary proceedings, is not applicable."

SECTION 19. Paragraph (a) of Section 3-403 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-403 Formal testacy proceedings; notice of hearing on petition. (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 1-401 by petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 3-204 of this chapter.

Notice shall be given to the following persons, so far as the same are known or are ascertainable with reasonable diligence: the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any will that is being, or has been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons, and to all known persons whose addresses are unknown, who have any interest in the matters being litigated other than creditors and those having a claim against the estate."

SECTION 20. Section 3-502 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-502 Supervised administration; when required; petition; order. A petition for supervised administration shall be filed for any estate subject to probate proceedings in this State if the gross value thereof is over \$30,000; provided however, if probate proceedings were commenced informally and the file is transferred pursuant to section 3-706(b), no new petition need be filed. A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a formal testacy or appointment proceeding, but if the estate qualifies for informal proceedings, the court may deny a petition for supervised administration filed by someone other than the personal representative for good cause. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration even

though the request for supervised administration may be denied. After notice to the persons enumerated in section 3-403 in the manner provided in section 1-401 and proof that a copy of the petition has been delivered to all such persons in the manner provided in section 1-401, the court shall order supervised administration of a decedent's estate:

- (1) If the gross value of the estate subject to probate proceedings in this State is over \$30,000;
- (2) If the personal representative requests it;
- (3) If the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;
- (4) If the decedent's will directs unsupervised administration, only upon a finding that it is necessary for protection of persons interested in the estate; or
- (5) In other cases if the court finds that supervised administration is necessary under the circumstances."

SECTION 21. Paragraph (b) of Section 3-503 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 3-401. If supervised administration is commenced on account of the discovery of additional assets so that the decedent's gross estate in this State is in excess of \$30,000, any distributions made in good faith by the personal representative shall not be disturbed, but the remaining estate of the decedent shall be administered and distributed pursuant to court order, and the determinations of testacy status and successors of the decedent made by the registrar shall not be binding on the court with respect to such remaining estate of the decedent."

SECTION 22. Paragraph (b) Section 3-706 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"(b) If the probate proceedings were commenced informally but the inventory and/or any appraisal reveal, or the personal representative otherwise learns prior to or after the close of the informal proceedings, that the gross value of the estate is in excess of \$30,000, the personal representative shall forthwith:

- (1) Commence a supervised proceeding by instructing the registrar to transfer the file to the court; and
- (2) Notify all persons enumerated in section 3-403 in the manner provided in section 1-401 of such transfer and the reason therefor; provided, however, no newspaper publication of the transfer shall be required."

SECTION 23. Section 3-707 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-707 Use of appraisers. The registrar or the court may appoint a qualified and disinterested appraiser for the purpose of ascertaining the fair market value as of the date of the decedent's death of any asset the value of which

appears to the registrar or the court to be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the appraisal with the item or items he appraised. The cost of the appraisal shall be borne by the estate. If any interested person disputes the valuation of an asset of the estate, whether set by appraisal ordered by the personal representative or the court or otherwise, the court shall determine the value after a hearing with notice pursuant to section 1-401 to all interested persons."

SECTION 24. Section 3-801 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-801 Notice to creditors; transfer of claims. (a) Unless notice has already been given under this section, a person applying or petitioning for appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the judicial circuit in which the application or petition is filed announcing his application or petition, the name of the person nominated as personal representative, and notifying creditors of the estate to present their claims as provided in section 3-804 within four months after the date of the first publication of the notice or be forever barred. The notice may be combined with any published notice of the pendency of the probate proceedings.

(b) If the application or petition is denied, the nominee shall promptly deliver all claims to the person who is appointed. Failure to deliver shall render the nominee liable for any damages suffered by the claimants."

SECTION 25. Paragraph (c) of Section 3-803 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"(c) Nothing in this section affects or prevents:

- (1) Any proceeding to enforce any mortgage, pledge, lien, or other secured interest upon property of the estate; or
- (2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance, but any such proceeding must be commenced within the later of the time specified in paragraph (a) or (b) above, as appropriate, or two years of the occurrence of the event insured against."

SECTION 26. Paragraph (a) of Section 3-805 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-805 Classification of claims. (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) Costs and expenses of administration;
- (2) Reasonable funeral expenses;
- (3) Up to \$6,000 of family allowance under sections 2-403 and 2-404;
- (4) Homestead allowance under section 2-401;
- (5) Exempt property under section 2-402;
- (6) Debts and taxes with preference under federal law;

- (7) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (8) Debts and taxes with preference under other laws of this State;
- (9) All other claims."

SECTION 27. Paragraph (a) of Section 3-1001 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1001 Formal proceedings terminating administration; order of general protection. (a) If an estate is being administered in a supervised proceeding, or if the personal representative in an informal proceeding so elects, or upon the petition of an interested person in an informal proceeding and a finding of good cause by the court:

- (1) A personal representative shall petition for an order of complete settlement of the estate within two years, or such additional time as the court in its discretion shall permit for good cause, following the original appointment of a general personal representative for the estate, and any interested person may so petition after one year from the original appointment of a general personal representative for the estate, except that no petition under this section may be maintained until the time for presenting claims which arose prior to the death of the decedent has expired;
- (2) The petition shall request the court to approve the final accounts, to construe any will or determine heirs if not previously determined by the court, to adjudicate the final settlement and distribution of the estate, to terminate the personal representative's appointment, and to discharge the personal representative from further claims;
- (3) After notice pursuant to section 1-401 to all interested persons and hearing and proof that a copy of the petition has been delivered to all interested persons pursuant to section 1-401, the court shall enter an order or orders, on appropriate conditions, approving the final accounts, determining the persons entitled to distribution of the estate, and directing or approving settlement and distribution of the estate, terminating the personal representative's appointment and discharging the personal representative from further claim or demand of any interested person upon proof of distribution in the manner ordered."

SECTION 28. Section 3-1003 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1003 Informal proceedings terminating administration; order of general protection. (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative shall close an estate by filing with the registrar no later than one year, or such additional time as the registrar shall permit for good cause, following the original appointment of a general personal representative for the estate, a verified statement containing the following:

- (1) A statement that he, or a prior personal representative whom he has

succeeded, has or have published notice to creditors as provided by section 3-801;

- (2) A statement that he, or a prior personal representative whom he has succeeded, has or have fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were timely presented (except as specified in the statement), and all estate, inheritance and other death taxes. If any claims or taxes remain undischarged, the statement shall state whether the personal representative has or intends to distribute the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate such outstanding liabilities;
- (3) An itemization of all income received and all expenses paid by the personal representative or a prior personal representative whom he has succeeded, and of all property of the estate remaining in the hands of the personal representative;
- (4) The names of all distributees of the estate and the property received or to be received by each; and
- (5) Proof that a copy of the statement has been delivered to all interested persons pursuant to section 1-401 (except that published notice shall not be required) together with a statement advising them that they have fourteen days from the date of mailing or service within which to object to the statement by filing a petition for a supervised closing.

(b) If any interested person timely objects to a closing statement by filing a petition for a supervised closing, proceedings pursuant to section 3-1001(a) above shall be maintained if the court finds good cause therefor. If no such petition or order is filed, the registrar without a hearing shall approve the closing statement, order the distribution specified therein, order the termination of the personal representative's appointment and discharge the personal representative from further claim or demand of any interested person upon proof of payment of taxes and distribution in the manner specified in the closing statement."

SECTION 29. Section 3-1201 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1201 Collection of personal property by affidavit. Any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the successor stating that:

- (1) The net value of the decedent's estate in this State does not exceed \$100;
- (2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
- (3) The claiming successor is entitled to payment or delivery of the property and explaining the relationship of the claiming successor to

the decedent.”

SECTION 30. Section 3-1202 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“**Sec. 3-1202 Effect of affidavit.** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to section 3-1201 is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.”

SECTION 31. Section 3-1205 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“**Sec. 3-1205 Estates of \$20,000 or less; clerk of court to administer.** If a person dies leaving property in this State of a total value not exceeding \$20,000, and a personal representative of the estate has not been appointed in the State, the clerk of the court of the judicial circuit in which the decedent was residing or domiciled at the time of his death or left property may, upon the verified petition of the clerk or of any interested person, obtain an order authorizing him to administer the estate, and, as the personal representative, he shall collect and receive the property and administer the same. The order may be made without notice or hearing, at the discretion of the court. Except as otherwise specifically required or authorized by law or where he may be interested as an heir, or devisee, no clerk of any court shall act as personal representative of any estate where the value of the same is in excess of \$20,000. No fees shall be allowed the clerk, except as set forth in section 3-1211.”

SECTION 32. Section 3-1206 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“**Sec. 3-1206 Publication by clerk of appointment as personal representative; notice to creditors, heirs, etc.** (a) If the estate has a total value of \$10,000 or less, upon such appointment the clerk shall publish the fact by posting a notice thereof at the front entrance of the court house of the judicial circuit and by advertising the notice in the English language at least once in a newspaper of general circulation in the judicial circuit, the notice to state briefly that all creditors of the deceased must file with the clerk duly verified claims within sixty days from the date of publication, and that all persons claiming to be heirs of the estate are requested to file with the clerk notice of such claims within the period. The court may direct that the advertising of the notice in a newspaper need not be made if it deems the same unnecessary.

(b) If the estate has a total value in excess of \$10,000, the content and method of giving notice, both of the pendency of the action and of all other acts

for which notice is required, shall be as provided for informal probates in article III, part 3."

SECTION 33. Section 3-1207 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1207 Presentation of claims of creditors. All creditors of the decedent shall present their claims, duly verified under oath, to the clerk within the time specified in the notice."

SECTION 34. Section 3-1208 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1208 Claims barred when. All claims of creditors not filed within the prescribed period from the date of the first publication are forever barred."

SECTION 35. Section 3-1209 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1209 Duties of clerk and distribution. The clerk shall make diligent effort to ascertain the names and whereabouts of the heirs, or the whereabouts of the devisees of the decedent and present evidence relating thereto to the court having jurisdiction of the proceedings. After the expiration of sixty days after the first publication, the clerk shall pay or distribute the money, funds, or property of the estate in the order specified in section 3-805, including any allowances and exempt property under Part 4 of Article II authorized by the court, and the excess, if any, to or among such persons as may be found by the court to be the persons entitled thereto as distributees."

SECTION 36. Section 3-1210 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1210 Undistributed proceeds or balances, disposition. When any balance remains in the hands of the clerk, after payment in the order specified in section 3-805, and no heirs or devisees of the decedent, entitled to the balance, can be located after reasonable search and inquiry, the clerk, after the expiration of one year after the first publication, shall report the fact to the court, which shall forthwith enter an order forwarding such property to the state director of finance, and the clerk thereupon shall immediately deposit the money or funds, or any balance, with the director for disposition as provided in chapter 523. The director at any time may authorize the payment out of the general funds of the State of any amount so forwarded to any person who establishes to the satisfaction of the director that he is legally entitled thereto as an heir or devisee of the decedent, and the person shall be entitled to receive the amount thereof out of any moneys in the treasury not otherwise appropriated, upon warrant drawn by the state comptroller."

SECTION 37. Section 3-1211 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 3-1211 Exemption from costs. All proceedings had under and by virtue of this part 12, shall be free from all costs of court, except that the clerk may charge the actual expenses for advertising the notice specified in section 3-1206, the advertising, posting, or service fees required in carrying out any order

of the court, including orders relating to the sale of real or personal property, and any expenses reasonably necessary for the preservation, disposal, distribution, and administration of the estate, together with a fee of three per cent of the market value of the first \$10,000 in the gross estate, the fee to be paid into the treasury of the State as a government realization from any available assets of the estate; provided, that if the administration is completed by another personal representative on account of the size of the estate or for any other reason, no fee shall be charged by the clerk.

SECTION 38. A new section designated as Section 4-207 and reading as follows is added to Section 1, Act 200, Session Laws of Hawaii 1976:

"Sec. 4-207 Ancillary administrations; provisions governing. In respect to a non-resident decedent, the provisions of Article III of this chapter govern (1) informal or formal proceedings, if any, in this State for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of claimants, purchasers, distributees and others in regard to a local administration; provided, however, a spouse, parent or child of a non-resident decedent who is otherwise qualified to serve as a personal representative in this State shall not be disqualified by reason of non-residency to serve as a local personal representative in ancillary formal or informal proceedings."

SECTION 39. Section 5-102 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 5-102 Jurisdiction of subject matter; consolidation of proceedings. The court has jurisdiction over protective proceedings and the family court has jurisdiction over guardianship proceedings. Where protective and guardianship proceedings relating to the same person have been initiated, they may be consolidated in the court or in the family court as the court and the family court in the exercise of their discretion shall determine."

SECTION 40. A new section designated as Section 5-105 and reading as follows is added to Section 1, Act 200, Session Laws of Hawaii 1976:

"Sec. 5-105 Compensation of guardian ad litem, etc. Persons appointed by the family court to serve as guardians ad litem or to perform such other duties as may be requested by the family court in guardianship and protective proceedings shall be compensated in such amounts, if any, as the family court deems appropriate and reasonable. Any such compensation shall be paid from such source under the jurisdiction of the family court as it shall order."

SECTION 41. Section 5-204 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 5-204 Court appointment of guardian of the person of minor; conditions for appointment; letters; priority of testamentary nominee. The family court may appoint a resident of this State or a nonresident nominated by the will of a parent as a guardian of the person for an unmarried minor. The appointment shall be evidenced by letters of guardianship. Such guardian may be nominated by the will of the minor's parent, and the family court shall give

preference to any such nominee. The family court may appoint someone other than the testamentary nominee upon a showing of cause."

SECTION 42. Section 5-207 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 5-207 Court appointment of guardian of the person of minor; procedure. (a) Notice of the time and place of hearing of a petition for the appointment of a guardian of the person of a minor is to be given by the petitioner in the manner prescribed by section 1-401 to:

- (1) The minor, if he is fourteen or more years of age;
- (2) The person who has had the principal care and custody of the minor during the sixty days preceding the filing of the petition;
- (3) Any living legal parent and grandparent of the minor; and
- (4) Any guardian of the minor's property.

(b) Upon hearing, if the family court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the family court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interests of the minor.

(c) If necessary, the family court may appoint a temporary guardian of the person, with the status of an ordinary guardian of the person of a minor, but the authority of such temporary guardian shall not last longer than ninety days.

(d) If, at any time in the proceeding, the family court determines that the interests of the minor are or may be inadequately represented, it shall appoint a guardian ad litem to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age."

SECTION 43. Paragraph (b) of Section 5-303 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"(b) Upon the filing of a petition, the family court shall set a date for hearing on the issues of incapacity and, if at any time in the proceeding, the court determines that the interests of the allegedly incapacitated person are or may be inadequately represented, it shall appoint a guardian ad litem. The person alleged to be incapacitated may be examined by a physician appointed by the family court who shall submit his report in writing to the court and may be interviewed by a family court officer or other person designated by the family court. If so ordered by the family court, the family court officer or other person also shall interview the person seeking appointment as guardian of the person, shall visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made, and shall submit his report in writing to the family court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by an attorney, to present evidence, to cross-examine witnesses, including any person submitting a report and the family court officer or other person designated by the court to interview him. The issue may be

determined at a closed hearing.”

SECTION 44. Section 5-304 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“Sec. 5-304 Finding; order of appointment. The family court may appoint a resident of this State or a nonresident nominated by the will of a parent as a guardian of the person as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. The order of appointment may limit or otherwise modify the power of the guardian of the person or may specify areas in which the ward shall retain the power to make and carry out decisions concerning his person. Alternatively, the family court may dismiss the proceeding or enter any other appropriate order.”

SECTION 45. Section 5-401 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“Sec. 5-401 Protective proceedings. Upon petition and after notice and hearing in accordance with this Part, the court may appoint a resident of this State or a trust company organized under the laws of this State or a nonresident nominated by the will of a parent as a guardian of the property or make other protective order for cause as follows:

- (1) Appointment of a guardian of the property or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.
- (2) Appointment of a guardian of the property or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance or other incapacity; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.”

SECTION 46. Paragraph (b) of Section 5-404 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

“(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian of the person, if any; the name and address of his nearest adult relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation,

insurance, pension or allowance to which he is entitled; and the reason why appointment of a guardian of the property or other protective order is necessary. If the appointment of a guardian of the property is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment."

SECTION 47. Section 5-405 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 5-405 Notice in protective proceedings. In a proceeding for the appointment or removal of a guardian of the property or other protective order, notice of the time and place of hearing must be given to the persons, including a guardian of the person, and in the manner specified in section 5-309, and to any person who has filed a request for notice under section 5-406."

SECTION 48. Paragraph (b) of Section 5-407 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"(b) Upon receipt of a petition for appointment of a guardian of the property or other protective order for reasons other than minority, the court shall set a date for hearing on the matters alleged in the petition. Unless the person to be protected has competent counsel of his own choice, the court shall appoint an appropriate official or attorney to represent him, who shall have the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may appoint a court officer or other person to interview the person to be protected and the person seeking appointment. The person so appointed shall submit his report in writing to the court."

SECTION 49. Section 5-501 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 5-501 When power of attorney not affected by disability. Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law. All acts done by the attorney in fact or agent during the life of the principal pursuant to the power during any period of disability or incompetence have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a guardian of the person or of the property thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian of the property rather than the principal. The guardian of the property has the

same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency."

SECTION 50. Paragraph (a) of Section 5-502 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 5-502 Other powers of attorney revoked upon death or disability. (a) The death, or, except as provided in section 5-501, the disability or incompetence of any principal who has executed a power of attorney revokes or terminates the power whether or not the attorney in fact has actual knowledge of the death, disability or incompetence of the principal."

SECTION 51. Section 6-107 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 6-107 Rights against multiple-party accounts. A transfer to a survivor of a multiple-party account can be set aside, to the extent described below, in the event the assets in the hands of the personal representative of the deceased party are insufficient to pay taxes, expenses of administration, and homestead and family allowances under sections 2-401 and 2-403. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party may, on application of the personal representative of the deceased party's estate, the surviving spouse of the deceased party, or one acting for a dependent or minor child of the deceased party, be required to account to said personal representative for the deceased party's net contribution to the account to the extent necessary to discharge the insufficiency described above. No proceeding to assert this right shall be commenced later than two years following the death of the deceased party. Sums recovered hereunder shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment either the institution has been served with process in a proceeding by the personal representative or the institution has actual knowledge that making payment will jeopardize the payment of the taxes, expenses and allowances above mentioned."

SECTION 52. Section 6-113 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 6-113 Financial institution protection; set-off. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is the deceased party's net contribution to the account, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal."

SECTION 53. Section 7-101 of Section 1, Act 200, Session Laws of Hawaii 1976 is amended to read as follows:

"Sec. 7-101 Duty to register trusts. The trustee of a trust having its principal

place of administration in this State who is required to register the trust under section 1-108 shall register the trust in the court in the judicial circuit either of the principal place of administration of the trust, or, in the case of a trust relating only to land, of the place where the land is located. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-trustees as agreed upon by them. The duty to register under this Part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release."

SECTION 54. Sections 533-14 and 533-15, Hawaii Revised Statutes, are repealed.

SECTION 55. Section 551-22, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 551-22 Estates less than \$100. When the whole estate of a person over the age of eighteen for whom a guardian of the property could be appointed does not exceed the value of \$100, the court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the court. The person receiving such money or other assets shall hold and dispose of the same in such manner as the court shall direct."

SECTION 56. Section 501-171, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 501-171 Registration upon transfer by descent and devise. When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto may file with the assistant registrar of the land court the duplicate certificate issued to the testator, a correct statement of the full names of the devisees, the residence and post office address of each and their marital status, a certified copy of the will, either a certified copy of the order of the circuit court admitting it to probate or a certified copy of the written statement of the registrar of the circuit court admitting it to informal probate, and a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution, and thereupon the assistant registrar shall cancel the duplicate certificate issued to the testator, and issue a new duplicate certificate or certificates to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons

entitled thereto by law may file with the assistant registrar the duplicate certificate issued to the intestate, a correct statement of the full names of the heirs, the residence and post office address of each, and their marital status, a certified copy of the judgment of the circuit court in an action determining the heirs, or a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution, and thereupon the assistant registrar shall cancel the duplicate certificate issued to the intestate, and issue a new duplicate certificate or certificates to the heir or heirs entitled thereto.

Instruments which must be registered. No voluntary instrument or deed of a personal representative, assignee for the benefit of creditors, sheriff, master, commissioner, or other officer purporting to transfer or create a lien or charge upon any estate or interest of any devisee or heir in registered land or to authorize the same to be done, shall have any effect to accomplish that purpose until the title of the heir or devisee is registered as herein provided. An involuntary lien, charge or lis pendens against the interest of a relict, heir, or devisee in the lands of the deceased registered owner, prior to the registration of the title of such relict, heir or devisee, only can be obtained by filing the proper papers with the assistant registrar as in other cases, and the assistant registrar making entry thereof as a memorial on the registered certificate of title of the deceased owner, giving the name, residence, and post office address of the relict, heir, or devisee against whom the lien, charge, or lis pendens is to operate."

SECTION 57. Section 501-172, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 501-172 License to sell or mortgage, not affected. Nothing in this chapter shall in any way affect or impair the jurisdiction of a circuit court to license a guardian, to sell, mortgage, or convey registered land for any purpose for which a license may be granted in the case of unregistered land. The purchaser or mortgagee taking a deed executed in pursuance of a license is entitled to a new certificate of title, or memorandum of registration, on presenting his deed to the assistant registrar."

SECTION 58. Section 501-173, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 501-173 Purchaser acquiring title through personal representative may have the same registered. If any personal representative is authorized by the terms of any will to grant, bargain, sell, convey, mortgage, or otherwise deal with registered land, he may do so in the same manner as if the land were registered in his name as personal representative. Before any instrument executed by the personal representative, pursuant to such authority, is filed with the assistant registrar of the land court, there shall be first filed with the assistant registrar a certified copy of the will together with a certified copy of the order of the circuit court admitting the same to probate or a certified copy of the written statement of the registrar of the circuit court admitting it to informal probate, and a certified copy of the letters, on which shall be listed all orders of the circuit court relating to the personal representative's authority to grant, bargain, sell, convey,

mortgage, lease or otherwise deal with real property, and a certified copy of each such order. Any person who acquired title or any interest in registered land through or by virtue of the execution of the power vested in the personal representative may have the title or interest registered."

SECTION 59. Chapter 522, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 531-33, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 531-33 Procedure to dispose of unclaimed personalty. Whenever the personal representative of an estate is unable to discover any living heirs or legatees of his decedent, he shall give notice to all heirs or legatees by publication in such newspaper or newspapers and for such time as the court or registrar may direct, but not less than once a week for three successive weeks, of the date of the hearing upon his final accounts or the date on which his closing statement will be approved if no objection is filed, which notice shall direct all claimants of a distributive share in the estate of his decedent to appear and present their claims at the hearing or in writing prior to the date on which the closing statement will be approved if no objection is filed; provided, that the time allowed for presentation of claims shall be not less than ninety days after the first publication of the notice.

If no claims are presented within the prescribed time, or if such claims as may be allowed do not exhaust the personalty of the estate, any personal estate remaining after the settlement and approval of the final accounts of the personal representative, and the payment of such distributive shares as may be allowed by the court or registrar be transferred to the state director of finance by the personal representative.

The director shall cause to be sold at public auction all such personalty as is transferred to him, except cash or bonds of the State.

The personal estate shall be disposed of as provided in chapter 523."

SECTION 61. Section 535-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 535-1 Specific performance of decedent's contracts to convey real estate. When any person, who is bound by a contract in writing to convey any real estate, dies before making the conveyance, the other party may commence an action in a circuit court to enforce a specific performance of the contract, the action to be commenced within one year after the grant of administration."

SECTION 62. Sections 535-2, 535-3, 535-4, 535-6 and 535-7, Hawaii Revised Statutes, are repealed.

SECTION 63. Section 656-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 656-1 Certain contracts, when actionable. No action shall be brought and maintained in any of the following cases:

- (1) To charge an executor or administrator, upon any special promise to answer for damages out of his own estate;
- (2) To charge any person upon any special promise to answer for the debt, default, or misdoings of another;

- (3) To charge any person, upon an agreement made in consideration of marriage;
- (4) Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them;
- (5) Upon any agreement that is not to be performed within one year from the making thereof;
- (6) To charge any person upon any agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or commission;
- (7) To charge the estate of any deceased person upon any agreement which by its terms is not to be performed during the lifetime of the promisor, or, in the case of agreements made prior to July 1, 1977, of an agreement to devise or bequeath any property, or to make any provision for any person by will;

Unless the promise, contract, or agreement, upon which the action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith, or by some person thereunto by him in writing lawfully authorized."

SECTION 64. This Act shall take effect on July 1, 1977.†

(Approved June 1, 1977.)

†Edited in manner of other Acts.