

ACT 37

S.B. NO. 1370

A Bill for an Act Relating to Divorce.

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

SECTION 1. Section 580-47, Hawaii Revised Statutes, is hereby amended to read as follows:

"Sec. 580-47 Support orders; division of property. (a) Upon granting a divorce, the court may make such further orders as shall appear just and equitable (i) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (ii) compelling either party to provide for the support and maintenance of the other party; (iii) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (iv) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether

community, joint or separate, and the attorney's fees, costs, and expenses incurred by each party by reason of the divorce. In making such further orders, the court shall take into consideration the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. Provision may be made for the support, maintenance and education of an adult or minor child and for the support, maintenance and education of an incompetent adult child whether or not the application is made before or after the child has attained the age of majority.

(b) An order as to the custody, management, and division of property and as to the payment of debts and the attorney's fees, costs and expenses incurred in the divorce shall be final and conclusive as to both parties subject only to appeal as in civil cases. The court shall at all times, including during the pendency of any appeal, have the power to grant any and all orders that may be necessary to protect and provide for the support and maintenance of the parties and any children of the parties to secure justice, to compel either party to advance reasonable amounts for the expenses of the appeal including attorney's fees to be incurred by the other party, and to amend and revise such orders from time to time.

(c) No order entered under the authority of subsection (a) of this section or entered thereafter revising so much of such an order as provides for the support, maintenance and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to such support, maintenance and education.

(d) Upon the motion of either party supported by an affidavit setting forth in particular a material change in the physical or financial circumstances of either party, or upon the motion of the party against whom an order was entered supported by an affidavit setting forth in particular that the other party, although able and capable of substantially rehabilitating himself or herself financially, has wilfully failed to do so, the moving party may, in the discretion of the court, and upon adequate notice to the other party, be granted a hearing. The fact that the moving party is in default or arrears in the performance of any act or payment of any sums theretofore ordered to be done or paid by him or her shall not necessarily constitute a bar to the granting of the hearing. The court, upon such hearing, shall consider all proper circumstances in determining the amount of the allowance, if any, which shall thereafter be ordered.

(e) Attorney's fees and costs. The court hearing any motion for orders either revising an order for the support, maintenance and education of the children of the parties, or an order for the support and maintenance of one party by the other, or a motion for an order to enforce any such order or any order made under subsection (a) of this section, may make such orders requiring either party to pay or contribute to the payment of the attorney's fees, costs and expenses of the other party relating to such motion and hearing as shall appear

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just and equitable after consideration of the respective merits of the parties, the relative abilities of the parties, the economic condition of each party at the time of the hearing, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 5, 1977.)

*Edited accordingly.