

ACT 123

H.B. NO. 2312-78

A Bill for an Act Relating to Uniform Probate Code.

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

SECTION 1. Section 560:3-1201, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 560:3-1201 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] \$1000;
- (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 2. Section 560:3-1213, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 560:3-1213 Estates not in excess of [\$700] \$2,000.** Upon the death of any person dying intestate and leaving only personal property in the State not exceeding [\$700] \$2,000 and where a personal representative has not been appointed in the State, a clerk of the court of the judicial circuit wherein the person was domiciled or if not domiciled in the State, the judicial circuit wherein he was residing or had personal property at the time of his death, may, upon the filing with the clerk by any interested person of a death certificate issued by a government agency and of an affidavit setting forth the above facts, the names of the heirs if known, and other pertinent facts as required by the clerk, collect or otherwise reduce to possession or turn into cash all assets of the estate. If after payment of funeral expenses as a preferred claim against the estate there are assets remaining, the clerk shall give notice to creditors and heirs as provided by section 560:3-1206 by posting, or if there are sufficient funds, by posting and advertising, and if after the period and distribution of assets to creditors of

deceased persons who have filed proper claims there are assets remaining, then the clerk upon the facts contained in the affidavit as to heirship, shall deliver the assets to the personal representative, if any, or if no personal representative has been appointed, then to the heirs in accordance with the statutes of descent of the State. If no creditors, personal representative, or heirs appear or are found within sixty days of the notice, the clerk shall convert all personal property into cash and forthwith deposit the same with the state director of finance for disposition as provided in chapter 523."

SECTION 3. Section 560:1-201, Hawaii Revised Statutes, is amended by amending paragraph (24) to read as follows:

"(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, or guardian, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. A person's status as an interested person terminates when he no longer has an interest in the estate."

SECTION 4. Section 560:2-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

["(b) If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death.]

"(b) If a married person not domiciled in this State dies possessed of any right, title or interest in or to real property located in this State, including interests under agreement of sale, title to such right, title or interest shall vest, and the right, if any, of the surviving spouse to take an elective share in such right, title or interest, shall be governed, by the laws of this State. If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take any elective share in any property other than those described in the immediately preceding sentence is governed by the law of the decedent's domicile at death."

SECTION 5. Section 560:2-401, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 560:2-401 Homestead allowance.** A surviving spouse of a decedent who was domiciled in this State is entitled to a homestead allowance of \$5,000 [.] which may be taken in cash or property. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$5,000 divided by the number of minor and dependent children of the decedent. The homestead allowance has priority as specified in section 560:3-805. The homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share."

SECTION 6. Section 560:2-504, Hawaii Revised Statutes, is amended to

read as follows:

“**Sec. 560:2-504 Self-proved will.** An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs, and evidenced by the officer’s certificate, under official seal, attached or annexed to the will substantially in form and content as follows:

THE STATE OF .....  
COUNTY OF .....

We, ....., and .....  
the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will, [and] that he [had] signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness; and that to the best of [his] their knowledge the testator was at that time eighteen or more years of age, of sound mind and under no constraint or undue influence.

.....  
Testator  
.....  
Witness  
.....  
Witness

Subscribed, sworn to and acknowledged before me by .....  
the testator, and subscribed and sworn to before me by .....  
and ....., witnesses, this ..... day  
of ....., .....  
(SEAL) (Signed) .....  
(Official capacity of officer)”

SECTION 7. Section 560:3-204, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 560:3-204 Demand for notice of order or filing concerning decedent’s estate.** Any interested person desiring notice of any order or filing pertaining to a decedent’s estate may file a demand for notice with the court at any time after the death of a decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant’s address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 560:1-401 to the demandant or his attorney [.] upon payment by the demandant or his attorney for the cost of reproducing the copies demanded. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person

making the filing may be liable for any damage suffered by the demandant on account of the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate."

SECTION 8. Section 560:2-801, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) A person or the representative of an incapacitated or protected person, or the personal representative of a deceased person with the written consent of all affected beneficiaries, who is an heir, devisee, grantee, donee, surviving joint tenant, person succeeding to a renounced interest, beneficiary under a testamentary instrument or nontestamentary instrument, who has not accepted the property or interest to be renounced, or appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary instrument, may renounce in whole or in part the right of succession to, or transfer to him of, any property or interest therein, including a future interest, by filing a written renunciation under this section.

A surviving joint tenant or tenant by the entireties may renounce as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant or tenant by the entireties may renounce the entire interest in any property, or interest therein, that is the subject of a joint tenancy or tenancy by the entireties devolving to him, if the joint tenancy was created by act of a deceased joint tenant or tenant by the entireties, if the survivor did not join in creating the joint tenancy or tenancy by the entireties, and he has not accepted a benefit thereunder.

[The right to renounce does not survive the death of the person having it.] The instrument shall (1) describe the property or interest renounced, (2) declare the renunciation and extent thereof, and (3) be signed by the person renouncing.

- (b) (1) An instrument renouncing a present interest shall be filed not later than [six] nine months after the death of the decedent or the donee of the power.
- (2) An instrument renouncing a future interest shall be filed not later than [six] nine months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.
- (3) The renunciation shall be filed in the court of the judicial circuit in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation [may] shall be recorded or filed in the bureau of conveyances or the office of the assistant registrar of the land court, as appropriate [.] and shall not be effective until such recordation or filing.
- (c) Unless the decedent or donee of the power has otherwise provided, the

property or interest renounced devolves as if the person renouncing had predeceased the decedent or, if the person renouncing is designated to take under a power of appointment exercised by a testamentary or nontestamentary instrument, as if the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.”

SECTION 9. 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 10. This Act shall take effect upon its approval.

(Approved May 24, 1978.)