

ACT 31

H.B. NO. 1427

A Bill for an Act Relating to the Probate Code.

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

SECTION 1. The purpose of this Act is to clarify section 560:3-1201 of the probate code, relating to the collection of personal property by affidavit and summary administration of small estates.

First, the intent of the legislature is that all types of personal property, both tangible and intangible, are transferrable by affidavit pursuant to section 560:3-1201. Because of the current wording of that section, however, there is a question as to whether it actually has that scope. For example, it is not clear that vested interests in trust estates are transferrable pursuant to that section. Section 560:3-1201 is amended to clarify that all such personal property is transferrable by affidavit.

Second, section 560:3-1201 focuses on “a person claiming to be the successor of the decedent”, thus raising a question whether the affidavit procedure under that section is available in the common case in which a decedent leaves more than one heir or devisee. There is no valid policy reason why the affidavit procedure should be available where a decedent leaves only one successor but should not be available where the decedent leaves more than one. The section is therefore amended to clarify that the affidavit procedure is available in both cases in which a decedent leaves just one successor and in cases in which a decedent leaves more than one successor.

Finally, section 560:3-1201 does not clearly require registrars of title—for example, the county directors of finance (with respect to motor vehicles), various transfer agents (with respect to stock certificates), and the director of transportation (with respect to boats, etc.)—to issue new indicia of ownership to one who presents the type of affidavit contemplated by that section. The section is therefore amended to require any such registrar of title to change the registered ownership of the decedent’s interest in the property from the decedent to the decedent’s claimed successor, and to issue a certificate or other document evidencing ownership of the property by the successor.

SECTION 2. Section 560:3-1201, Hawaii Revised Statutes, is amended to read as follows:

**“§560:3-1201 Collection of personal property by affidavit.** (a) 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, or other intangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing [a] the debt, obligation, stock, [or] chose in action, or other intangible personal property to a person or persons [claiming] claimed to be the successor or successors of the decedent or to the department of human services where the department has paid for the decedent’s burial [services] pursuant to section 346-15, upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the claimed successor or successors or the department of human services stating that:

- (1) The gross value of the decedent’s estate in this State does not exceed \$20,000; except that a motor vehicle registered in the decedent’s name may be transferred regardless of value pursuant to this section;
- (2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
- (3) [(a)] (A) The [claiming] claimed successor [is] or successors are entitled to [payment or delivery of] the property and explaining the relationship of the [claiming] claimed successor or successors to the decedent; or  
 [(b)] (B) The department of human services has paid for the decedent’s burial.

The affidavit of the department of human services shall have priority over any other claim [filed] presented pursuant to this section.

(b) Upon the presentation of an affidavit meeting the requirements of subsection (a), any person having legal authority to issue a certificate or other evidence of ownership of tangible personal property or a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall change the registered ownership of the decedent’s interest in the property from the decedent to the decedent’s claimed successor or successors and shall issue a certificate or other document evidencing the ownership of the property by the decedent’s claimed successor or successors.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1995.)