

A Bill for an Act Relating to Probate.

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

SECTION 1. Section 560:2-205, Hawaii Revised Statutes, is amended to read as follows:

“§560:2-205 Decedent’s nonprobate transfers to others. The value of the augmented estate includes the value of the decedent’s nonprobate transfers to others, not included under section 560:2-204, of any of the following types, in the amount provided respectively for each type of transfer:

- (1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent’s death. Probate included under this category consists of:
 - (A) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent’s death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent’s estate or surviving spouse;
 - (B) The decedent’s fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent’s fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent’s death to a surviving joint tenant other than the decedent’s surviving spouse;
 - (C) The decedent’s ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent’s ownership interest, to the extent the decedent’s ownership interest passed at the decedent’s death to or for the benefit of any person other than the decedent’s estate or surviving spouse[; and]. As used herein, “ownership interest” is determined by dividing (i) the sum of all the decedent’s deposits to the account, including deposit life insurance proceeds added to the account on account of the decedent’s death, less all withdrawals made by or for the benefit of the decedent, by (ii) the sum of all deposits to the account;
 - (D) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent’s death to or for the benefit of any person other than the decedent’s estate or surviving spouse;
- (2) Property transferred in any of the following forms by the decedent during marriage:
 - (A) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent’s right terminated at or

continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse;

- (B) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount;
- (3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:
- (A) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1)(A), (B)¹ or (C), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph, "termination", with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, [occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property,] occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in paragraph (1)(A), "termination" occurs when the power terminated by exercise or release, but not otherwise;
 - (B) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1)(D) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's

- [death to or for the benefit of any person other than the decedent's] estate or surviving spouse;
- (C) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded \$20,000."

SECTION 2. Section 560:2-702, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) Exceptions. Survival by one hundred twenty hours is not required if:
- (1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
 - (2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival must be established by clear and convincing evidence;
 - (3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 560:2-901(a)(1), (b)(1), or (c)(1) or to become invalid under section [560:2-901(a)(2), (b)(2), or (c)(2);] 525-1(a)(2), (b)(2), or (c)(2); but survival must be established by clear and convincing evidence; or
 - (4) The application of a one hundred twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.”

SECTION 3. Section 560:3-203, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- “(f) No person is qualified to serve as a personal representative who is:
- (1) [Under] An individual under the age of eighteen; [and] or
 - (2) A person whom the court finds unsuitable in formal proceedings.”

SECTION 4. Section 560:3-302, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Upon receipt of an application requesting informal probate of a will filed by a corporate fiduciary, by a parent or spouse of the decedent, or by a descendant of a parent of the decedent, the registrar, upon making the findings required by section 560:3-303, shall issue a written statement of informal probate[,] appointing a personal representative subject to qualification and acceptance, if at least one hundred twenty hours have elapsed since the decedent's death.

(b) Upon receipt of an application requesting informal probate of a will filed by someone other than as enumerated in subsection (a), the registrar shall set a date which shall be the earliest by which the registrar will decide the application. On or after such date, upon making the findings required by section 560:3-303, the registrar shall issue a written statement of informal probate[, granting any request for statutory allowances and exempt property, and] appointing a personal representative

subject to qualification and acceptance if at least fourteen days have passed after the last mailing or other delivery of the advance notice required by section 560:3-306, if proof that such notice has been given is filed with the registrar and if no petition for formal testacy proceedings has been filed.”

SECTION 5. Section 560:3-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition, for any application for informal probate under section 560:3-302(b), the moving party [must] shall mail an advance notice to the heirs and devisees informing them of the party’s application. The advance notice shall include the name and address of the applicant, the name and location of the court in which the application has been filed for informal probate, a copy of the application, a copy of any will and codicil being submitted for probate, and the date on or after which the registrar will act on the application. The advance notice shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant.”

SECTION 6. Section 560:3-307, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 560:3-614, if at least one hundred twenty hours have elapsed since the decedent’s death, and after the registrar has made the findings required by section 560:3-308, the registrar shall appoint the applicant subject to qualification and acceptance; provided that if the decedent was a non-resident, the registrar shall delay the [order of] appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent’s domicile is the applicant, or unless the decedent’s will directs that the decedent’s estate be subject to the laws of this State.”

SECTION 7. Section 560:3-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 560:3-301(a)(1) and (4) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by section 560:3-301(a)(4)(B)[.] may be omitted.”

SECTION 8. Section 560:3-603, Hawaii Revised Statutes, is amended to read as follows:

“**§560:3-603 Bond not required without court order, exceptions.** (a) No bond is required of a personal representative appointed in informal proceedings, except:

- (1) Upon the appointment of a special administrator where bond has been requested by an interested party and the court is satisfied that it is desirable;
- (2) When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(3) When bond is required under section 560:3-605.

(b) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties."

SECTION 9. Section 560:3-605, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-605 Demand for bond by interested person. Any person apparently having an interest in the estate worth in excess of \$1000, or any creditor having a claim in excess of \$1000, may make a written demand that a personal representative give bond. The demand [must] shall be filed with the [registrar] court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, if ordered by the court, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 560:3-603 or 560:3-604. After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause of² the personal representative's removal and appointment of a successor personal representative."

SECTION 10. Section 560:3-803, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) Any proceeding to enforce any mortgage, pledge, [lien,] or other [secured interest] lien upon property of the estate;
- (2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative or the decedent's trustee for which the personal representative or the trustee is protected by liability insurance; or
- (3) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or trustee or by the attorney or accountant for the personal representative of the estate or the decedent's trustee."

SECTION 11. Section 560:3-914, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-914 Disposition of unclaimed assets. If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person, whether realty or [[]personalty[]], to that [persons' conservator,] person's guardian of the property, if any, otherwise to the State to become a part of the treasury of the State under chapters 523A and 665, as appropriate."

SECTION 12. Section 560:3-1006, Hawaii Revised Statutes, is amended to read as follows:

“§560:3-1006 Limitations on actions and proceedings against distributees. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of three years after the decedent’s death or one year after the time of its distribution thereof, but all claims of creditors of the decedent, are barred [one year after the decedent’s death.] as set forth in section 560:3-803. This section does not bar an action to recover property or value received as a result of fraud.”

SECTION 13. Section 560:7-303, Hawaii Revised Statutes, is amended to read as follows:

“§560:7-303 Duty to inform and account to beneficiaries. [Subject to the provisions of section 560:1-108, the] The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration[.]; provided, however, during the life of the settlor, the trustee of a revocable 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. In addition:

- (1) Within thirty days after the trustee’s acceptance of the trust, the trustee shall inform in writing the persons currently entitled to benefits from the trust, and if possible, one or more persons who under section 560:1-403 may represent beneficiaries with future interests, of the court in which the trust is registered and of the trustee’s name and address.
- (2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect the beneficiary’s interest and with information about the assets of the trust and the particulars relating to the administration.
- (3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.”

SECTION 14. Section 531-28.5, Hawaii Revised Statutes, is amended to read as follows:

“§531-28.5 Petition to sell real property. [In cases where the will of the decedent does not specifically authorize the personal representative to sell real property, a] If required by the decedent’s will or if demanded by a devisee in a testate probate proceeding or by an heir in an intestate probate proceeding, the personal representative or guardian shall present to the court having jurisdiction of the estate a petition setting forth the condition of the estate, and the facts and circumstances tending to show the necessity or expediency of the sale of real property. If it appears to the court either that it is necessary or that it would be advisable and for the benefit of the estate that the real property or any part thereof be sold, and that sufficient notice of the proposed sale has been given to interested persons as defined in section 560:1-201, the court may authorize the personal representative or guardian to sell the real property either at private sale or at public auction on such terms as the court shall order.”

SECTION 15. Section 560:2-103, Hawaii Revised Statutes, is amended to read as follows:

“**§560:2-103 Share of heirs other than surviving spouse.** Any part of the intestate estate not passing to the decedent’s surviving spouse under section 560:2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

- (1) To the decedent’s descendants by representation;
- (2) If there is no surviving descendant, to the decedent’s parents equally if both survive, or to the surviving parent; provided, however, if the decedent is a minor, and if it is shown by clear and convincing evidence that any parent has:
 - (A) Deserted the child without affording means of identification for a period of at least ninety days;
 - (B) Failed to communicate with the child when able to do so for a period of at least one year when the child is in the custody of another; or
 - (C) Failed to provide for care and support of the child when able to do so for a period of at least one year when the child is in the custody of another despite a child support order requiring such support;
- (3) such parent shall be deemed to have predeceased the decedent; If there is no surviving descendant or parent[,] entitled to inherit, to the descendants of the decedent’s parents or either of them by representation; and
- (4) If there is no surviving descendant, parent[,] entitled to take, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent’s paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent’s paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent’s maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent’s relatives on the other side in the same manner as the half.”

SECTION 16. Act 288, Session Laws of Hawaii 1996, is amended by amending section 5 to read as follows:

“SECTION 5. **Effect and transition.** (a) The amendments made by this Act shall take effect on January 1, 1997.

(b) Except as provided elsewhere in this Act, on [July 1, 1997:] January 1, 1997:

- (1) The amendments made by this Act apply to any governing instruments executed by decedents dying thereafter;
- (2) The amendments made by this Act apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except:
 - (A) Parts 1 and 2 of Article II (relating to intestate succession and elective share) shall apply only to the estates of decedents dying after [July 1, 1997:] January 1, 1997; and
 - (B) To the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Act;

- (3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Act and is subject to the duties imposed with respect to any act occurring or done thereafter;
- (4) An act done before the effective date in any proceeding and any accrued right is not impaired by this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and
- (5) Any rule of construction or presumption provided in this Act applies to instruments executed before the effective date unless there is a clear indication of a contrary intent.’’

SECTION 17. Section 533-1, Hawaii Revised Statutes, is repealed.

SECTION 18. Statutory material to be repealed is bracketed.³ New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

Notes

1. Prior to amendment ‘‘,’’ appeared here.
2. Prior to amendment ‘‘for’’ appeared here.
3. Edited pursuant to HRS §23G-16.5.