

ACT 82

H.B. NO. 2305

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 560:3-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator’s domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than five years after the decedent’s death, except:

- (1) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;
- (2) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;
- (3) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment [in the event] if the contest is successful, may be commenced within [the later of twelve months from the informal probate or three years from the decedent's death;]:
 - (A) Ninety days after receiving notice of an informal proceeding pursuant to section 560:3-306;
 - (B) Twelve months from the date the will was informally admitted to probate; or
 - (C) Thirty days from the entry of a formal order approving the accounts and settlement of the estate by an informally appointed personal representative,
whichever time period expires first. If an informal proceeding is closed informally, the court in its discretion may allow a will contest to proceed after the limitations period has expired if it determines that notice of the informal probate proceedings was not provided pursuant to section 560:3-306 and not more than five years has elapsed since the decedent's death;
- (4) An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration have occurred within the five year period after decedent's death, but the personal representative has no right to possess estate assets as provided in section 560:3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and
- (5) A formal testacy proceeding may be commenced at any time after five years from the decedent's death if, in the discretion of the court it would be equitable to do so, for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will."

SECTION 2. Section 560:3-806, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As to claims presented in the manner described in section 560:3-804 within the time limit prescribed in section 560:3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for

the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. If the notice does not warn the claimant of the impending sixty-day bar, then the claim shall be barred if no petition for allowance or other proceeding on the claim has been brought within eighteen months of the date of the decedent's death. Failure of the personal representative to mail notice to a claimant of action on the claimant's claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.''

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

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

(Approved May 31, 2002.)