

ACT 39

H.B. NO. 2699

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 560:2-706, Hawaii Revised Statutes, is amended to read as follows:

“§560:2-706 Life insurance; retirement plan; [~~account with POD designation~~]; transfer-on-death registration; deceased beneficiary. (a) Definitions. In this section:

“Alternative beneficiary designation” means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

“Beneficiary” means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

- (1) A class member if the beneficiary designation is in the form of a class gift; and
- (2) An individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

“Beneficiary designation” includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

“Class member” includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

“Stepchild” means a child of the decedent’s surviving, deceased, or former spouse, and not of the decedent.

“Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 560:2-702.

(b) Substitute gift. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

- (1) Except as provided in paragraph (4), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent;
- (2) Except as provided in paragraph (4), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;
- (3) For the purposes of section 560:2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section; and
- (4) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(c) More than one substitute gift; which one takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

- (1) Except as provided in paragraph (2), the property passes under the primary substitute gift;
- (2) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift;
- (3) In this subsection:

"Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

"Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

"Younger-generation beneficiary designation" means a beneficiary designation that:

- (A) Is to a descendant of a beneficiary of the primary beneficiary designation;
- (B) Is an alternative beneficiary designation with respect to the primary beneficiary designation;
- (C) Is a beneficiary designation for which a substitute gift is created; and
- (D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

“Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation beneficiary designation.

(d) Protection of payors.

- (1) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given;
- (2) The written notice of the claim ~~must~~ shall be mailed to the payor’s main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent’s estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents’ estates located in the judicial circuit of the decedent’s residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(e) Protection of bona fide purchasers; personal liability of recipient.

- (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(f) This section shall not apply to payable-on-death accounts established at a financial institution. The payment of payable-on-death accounts shall be governed by section 560:6-110.”

SECTION 2. Section 560:3-708, Hawaii Revised Statutes, is amended to read as follows:

“§560:3-708 Duty of personal representative; supplementary inventory.

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent’s death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to interested persons [interested in the new information.] who request it or who requested a copy of the original inventory.”

SECTION 3. Section 560:5-305, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) [The] Unless otherwise ordered by the court for good cause shown, the kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent’s rights at the hearing, and the general powers and duties of a guardian;
- (2) Determine the respondent’s views about the proposed guardian, the proposed guardian’s powers and duties, and the scope and duration of the proposed guardianship;
- (3) Inform the respondent of the right to employ and consult with a lawyer at the respondent’s own expense and the right to request a court-appointed lawyer; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent’s attorney’s fees, will be paid from the respondent’s estate.

(d) In addition to the duties imposed by subsection (c), the kokua kanawai shall:

- (1) Interview the petitioner and the proposed guardian;
- (2) Visit the respondent’s present dwelling, unless otherwise ordered by the court for good cause shown, and visit any dwelling in which the respondent will live if the appointment is made;
- (3) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent’s relevant physical or mental condition; and
- (4) Make any other investigation the court directs.”

SECTION 4. Section 560:5-307, Hawaii Revised Statutes, is amended to read as follows:

“§560:5-307 Confidentiality of records. The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but are available to:

- (1) The court;
- (2) The respondent without limitation as to use;

- (3) The petitioner, the kokua kanawai, any nominated guardian, and the petitioner's, nominated guardian's, and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause."

SECTION 5. Section 560:5-311, Hawaii Revised Statutes, is amended by amending subsection(c) to read as follows:

"(c) Within fourteen days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification[-]; provided that, for good cause shown, the court may extend time for the order and notice to be sent or delivered to the ward, or otherwise modify or waive that requirement."

SECTION 6. Section 560:5-406, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [~~The~~] Unless otherwise ordered by the court for good cause shown, the kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;
- (2) If the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;
- (3) Inform the respondent of the respondent's rights, including the right to employ or request that the court appoint a lawyer to consult with a lawyer at the respondent's own expense; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate unless the court otherwise directs."

SECTION 7. Section 560:5-407, Hawaii Revised Statutes, is amended to read as follows:

"§560:5-407 Confidentiality of records. The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but shall be available to:

- (1) The court;
- (2) The respondent without limitation as to use;
- (3) The petitioner, the kokua kanawai, any nominated conservator, and the petitioner's, nominated conservator's, and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause."

SECTION 8. Section 560:5-409, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Within fourteen days after entry of the order of appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained fourteen years of age and is not missing, detained, or

unable to return to the United States, and to all other persons given notice of the petition[-]; provided that, for good cause shown, the court may extend time for the order and statement to be sent or delivered to the protected person, or otherwise modify or waive that requirement.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2008.

(Approved April 25, 2008.)