

ACT 21

H.B. NO. 293

A Bill for an Act Relating To Protective Proceedings.

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

SECTION 1. Section 560:5-401, Hawaii Revised Statutes, is amended to read as follows:

**“§560:5-401 Protective proceeding.** Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

- (1) A minor, if the court determines that:
  - (A) The minor owns money or property requiring management or protection that cannot otherwise be provided;
  - (B) The minor has, or may have, business affairs that may be put at risk or prevented because of the minor’s age; or
  - (C) Money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or

- (2) Any individual, including a minor, if the court determines that, for reasons other than age:
  - (A) By clear and convincing evidence, the individual is unable to manage property and business affairs effectively because of an impairment in the ability to receive and evaluate information or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance[;] or because of another physical, mental, or health impairment, or because the individual is missing, detained, or unable to return to the United States; and
  - (B) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.”

SECTION 2. Section 560:5-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The petition under subsection (a) shall set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;
- (2) If the petition alleges impairment in the respondent's ability to receive and evaluate information[;] or alleges another physical, mental, or health impairment, a brief description of the nature and extent of the respondent's alleged impairment;
- (3) If the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;
- (4) The name and address of the respondent's:
  - (A) Spouse or reciprocal beneficiary or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
  - (B) Adult children or, if the respondent has none, the respondent's parents and adult siblings or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;
- (5) The name and address of the person responsible for care or custody of the respondent;
- (6) The name and address of any legal representative of the respondent;
- (7) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts;
- (8) The reason why a conservatorship or other protective order is in the best interest of the respondent; and
- (9) A proposed itemized budget of income and expenditures.”

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**SECTION 3.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

**SECTION 4.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 5.** This Act shall take effect on July 1, 2009.

(Approved April 29, 2009.)