

JAN 18 2008

A BILL FOR AN ACT

RELATING TO THE UNIFORM PROBATE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 560:2-706, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§560:2-706 Life insurance; retirement plan; [account with**
4 **POD designation;] transfer-on-death registration; deceased**
5 **beneficiary.** (a) Definitions. In this section:

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

14 "Beneficiary" means the beneficiary of a beneficiary
15 designation under which the beneficiary must survive the
16 decedent and includes:

17 (1) A class member if the beneficiary designation is in
18 the form of a class gift; and



1 (2) An individual or class member who was deceased at the
2 time the beneficiary designation was executed as well
3 as an individual or class member who was then living
4 but who failed to survive the decedent, but excludes a
5 joint tenant of a joint tenancy with the right of
6 survivorship and a party to a joint and survivorship
7 account.

8 "Beneficiary designation" includes an alternative
9 beneficiary designation and a beneficiary designation in the
10 form of a class gift.

11 "Class member" includes an individual who fails to survive
12 the decedent but who would have taken under a beneficiary
13 designation in the form of a class gift had the individual
14 survived the decedent.

15 "Stepchild" means a child of the decedent's surviving,
16 deceased, or former spouse, and not of the decedent.

17 "Surviving beneficiary" or "surviving descendant" means a
18 beneficiary or a descendant who neither predeceased the decedent
19 nor is deemed to have predeceased the decedent under section
20 560:2-702.

21 (b) Substitute gift. If a beneficiary fails to survive
22 the decedent and is a grandparent, a descendant of a



1 grandparent, or a stepchild of the decedent, the following
2 apply:

3 (1) Except as provided in paragraph (4), if the
4 beneficiary designation is not in the form of a class
5 gift and the deceased beneficiary leaves surviving
6 descendants, a substitute gift is created in the
7 beneficiary's surviving descendants. They take by
8 representation the property to which the beneficiary
9 would have been entitled had the beneficiary survived
10 the decedent;

11 (2) Except as provided in paragraph (4), if the
12 beneficiary designation is in the form of a class
13 gift, other than a beneficiary designation to "issue",
14 "descendants", "heirs of the body", "heirs", "next of
15 kin", "relatives", or "family", or a class described
16 by language of similar import, a substitute gift is
17 created in the surviving descendants of any deceased
18 beneficiary. The property to which the beneficiaries
19 would have been entitled had all of them survived the
20 decedent passes to the surviving beneficiaries and the
21 surviving descendants of the deceased beneficiaries.
22 Each surviving beneficiary takes the share to which



1 the surviving beneficiary would have been entitled had
2 the deceased beneficiaries survived the decedent.

3 Each deceased beneficiary's surviving descendants who
4 are substituted for the deceased beneficiary take by
5 representation the share to which the deceased
6 beneficiary would have been entitled had the deceased
7 beneficiary survived the decedent. For the purposes
8 of this paragraph, "deceased beneficiary" means a
9 class member who failed to survive the decedent and
10 left one or more surviving descendants;

11 (3) For the purposes of section 560:2-701, words of
12 survivorship, such as in a beneficiary designation to
13 an individual "if he survives me", or in a beneficiary
14 designation to "my surviving children", are not, in
15 the absence of additional evidence, a sufficient
16 indication of an intent contrary to the application of
17 this section; and

18 (4) If a governing instrument creates an alternative
19 beneficiary designation with respect to a beneficiary
20 designation for which a substitute gift is created by
21 paragraph (1) or (2), the substitute gift is
22 superseded by the alternative beneficiary designation



1 only if an expressly designated beneficiary of the
2 alternative beneficiary designation is entitled to
3 take.

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

10 (1) Except as provided in paragraph (2), the property
11 passes under the primary substitute gift;

12 (2) If there is a younger-generation beneficiary
13 designation, the property passes under the younger-
14 generation substitute gift and not under the primary
15 substitute gift;

16 (3) In this subsection:

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



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

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

6 (A) Is to a descendant of a beneficiary of the
7 primary beneficiary designation;

8 (B) Is an alternative beneficiary designation
9 with respect to the primary beneficiary
10 designation;

11 (C) Is a beneficiary designation for which a
12 substitute gift is created; and

13 (D) Would have taken effect had all the deceased
14 beneficiaries who left surviving descendants
15 survived the decedent except the deceased
16 beneficiary or beneficiaries of the primary
17 beneficiary designation.

18 "Younger-generation substitute gift" means the
19 substitute gift created with respect to the younger-
20 generation beneficiary designation.

21 (d) Protection of payors.



- 1 (1) A payor is protected from liability in making payments
2 under the terms of the beneficiary designation until
3 the payor has received written notice of a claim to a
4 substitute gift under this section. Payment made
5 before the receipt of written notice of a claim to a
6 substitute gift under this section discharges the
7 payor, but not the recipient, from all claims for the
8 amounts paid. A payor is liable for a payment made
9 after the payor has received written notice of the
10 claim. A recipient is liable for a payment received,
11 whether or not written notice of the claim is given;
- 12 (2) The written notice of the claim must be mailed to the
13 payor's main office or home by registered or certified
14 mail, return receipt requested, or served upon the
15 payor in the same manner as a summons in a civil
16 action. Upon receipt of written notice of the claim,
17 a payor may pay any amount owed by it to the court
18 having jurisdiction of the probate proceedings
19 relating to the decedent's estate or, if no
20 proceedings have been commenced, to the court having
21 jurisdiction of probate proceedings relating to
22 decedents' estates located in the judicial circuit of



1 the decedent's residence. The court shall hold the
2 funds and, upon its determination under this section,
3 shall order disbursement in accordance with the
4 determination. Payment made to the court discharges
5 the payor from all claims for the amounts paid.

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

8 (1) A person who purchases property for value and without
9 notice, or who receives a payment or other item of
10 property in partial or full satisfaction of a legally
11 enforceable obligation, is neither obligated under
12 this section to return the payment, item of property,
13 or benefit nor is liable under this section for the
14 amount of the payment or the value of the item of
15 property or benefit. But a person who, not for value,
16 receives a payment, item of property, or any other
17 benefit to which the person is not entitled under this
18 section is obligated to return the payment, item of
19 property, or benefit, or is personally liable for the
20 amount of the payment or the value of the item of
21 property or benefit, to the person who is entitled to
22 it under this section;



1 (2) If this section or any part of this section is
2 preempted by federal law with respect to a payment, an
3 item of property, or any other benefit covered by this
4 section, a person who, not for value, receives the
5 payment, item of property, or any other benefit to
6 which the person is not entitled under this section is
7 obligated to return the payment, item of property, or
8 benefit, or is personally liable for the amount of the
9 payment or the value of the item of property or
10 benefit, to the person who would have been entitled to
11 it were this section or part of this section not
12 preempted.

13 (f) This section shall not apply to payable-on-death
14 accounts established at a financial institution. The payment of
15 payable-on-death accounts shall be governed by section
16 560:6-110."

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

19 "**§560:3-708 Duty of personal representative; supplementary**
20 **inventory.** If any property not included in the original
21 inventory comes to the knowledge of a personal representative or
22 if the personal representative learns that the value or



1 description indicated in the original inventory for any item is
2 erroneous or misleading, the personal representative shall make
3 a supplementary inventory or appraisal showing the market
4 value as of the date of the decedent's death of the new item or
5 the revised market value or descriptions, and the appraisers or
6 other data relied upon, if any, and file it with the court if
7 the original inventory was filed, or furnish copies thereof or
8 information thereof to interested persons [~~interested in the new~~
9 ~~information.~~] who request it or who requested a copy of the
10 original inventory."

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

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

17 (1) Explain to the respondent the substance of the
18 petition, the nature, purpose, and effect of the
19 proceeding, the respondent's rights at the hearing,
20 and the general powers and duties of a guardian;

21 (2) Determine the respondent's views about the proposed
22 guardian, the proposed guardian's powers and duties,



- 1 and the scope and duration of the proposed
2 guardianship;
- 3 (3) Inform the respondent of the right to employ and
4 consult with a lawyer at the respondent's own expense
5 and the right to request a court-appointed lawyer; and
- 6 (4) Inform the respondent that all costs and expenses of
7 the proceeding, including respondent's attorney's
8 fees, will be paid from the respondent's estate.

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

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

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



1 "§560:5-307 Confidentiality of records. The written
2 report of a kokua kanawai and any professional evaluation are
3 confidential and shall be sealed upon filing, but are available
4 to:

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

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

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



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

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

- 7 (1) Explain to the respondent the substance of the
8 petition and the nature, purpose, and effect of the
9 proceeding;
- 10 (2) If the appointment of a conservator is requested,
11 inform the respondent of the general powers and duties
12 of a conservator and determine the respondent's views
13 regarding the proposed conservator, the proposed
14 conservator's powers and duties, and the scope and
15 duration of the proposed conservatorship;
- 16 (3) Inform the respondent of the respondent's rights,
17 including the right to employ or request that the
18 court appoint a lawyer to consult with a lawyer at the
19 respondent's own expense; and
- 20 (4) Inform the respondent that all costs and expenses of
21 the proceeding, including respondent's attorney's



1 fees, will be paid from the respondent's estate unless
2 the court otherwise directs."

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

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

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

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

19 "(c) Within fourteen days after entry of the order of
20 appointment, the conservator shall deliver or send a copy of the
21 order of appointment, together with a statement of the right to
22 seek termination or modification, to the protected person, if



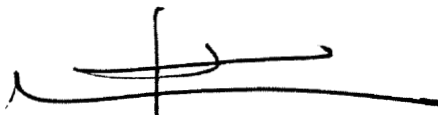
1 the protected person has attained fourteen years of age and is
 2 not missing, detained, or unable to return to the United States,
 3 and to all other persons given notice of the petition[-];
 4 provided that, for good cause shown, the court may extend time
 5 for the order and statement to be sent or delivered to the
 6 protected person, or otherwise modify or waive that
 7 requirement."

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

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

11

INTRODUCED BY:



By Request



Report Title:

Probate; Omnibus Bill

Description:

Clarifies applicability of probate laws to payable-on-death accounts and requirements for providing copies and notice of supplementary inventory or appraisement. Allows courts to modify kokua kanawai duties and service requirements for orders appointing a guardian or conservator. Authorizes disclosure of kokua kanawai reports and professional evaluations to certain parties.

