
A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. The legislature finds that excessive and
2 harmful property dissipation occurs during divorce cases, which
3 ultimately hurts any children involved. Failure to disclose the
4 existence of property or the wasting of assets leads to needless
5 litigation and excessive use of scarce court resources.
6 Applying commercial partnership model winding up duties and
7 chargeable marital estate reduction case law principles, with
8 additional definitions, procedures, and tools, will provide
9 litigants with notice of their responsibilities and will assist
10 the family court in managing difficult cases. In addition, the
11 legislature finds that changing the valuation date for property
12 division purposes to the date of the filing of the divorce
13 complaint will provide consistency and fairness while
14 encouraging efficient, timely, and accurate resolution of
15 property division issues.

16 The purpose of this Act is to provide effective procedures
17 for property division pursuant to a divorce while simplifying
18 and codifying existing law to ensure consistency, lower barriers



1 to justice, and to assist practitioners and pro se litigants
2 with family court divorce cases.

3 SECTION 2. Chapter 580, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§580- Definitions. For the purposes of this chapter:

7 "Date of the dissolution of the marital partnership" means
8 the earliest of the following dates:

- 9 (1) The date of the final separation in contemplation of
10 divorce;
11 (2) The date of the filing of the complaint for divorce;
12 (3) The date one or both of the parties took a substantial
13 step toward a final separation that subsequently
14 occurred; or
15 (4) The date one or both of the parties contemplated or
16 took a substantial step toward the filing of the
17 complaint for divorce that was subsequently filed.

18 "Dissipation" means the concealment or failure to disclose,
19 or the transferring, encumbering, wasting, or otherwise
20 disposing of any property, whether real, personal, or mixed,
21 over and above current income, except as necessary for the



1 ordinary course of a business or for usual current living
2 expenses.

3 "Marital estate" means anything of present or prospective
4 value of the parties.

5 "Property" means anything that may be the subject of
6 ownership.

7 "Transfer" means every mode, direct or indirect, absolute
8 or conditional, voluntary or involuntary, of disposing of or
9 parting with an asset or an interest in an asset, and includes a
10 payment of money, a release, a lease, and the creation of a lien
11 or encumbrance.

12 **§580- Marital partnership and property division.** (a)
13 The value of the property for division pursuant to section 580-
14 47 shall be set as of the date of the filing of the complaint
15 for divorce. The date of dissolution of the marital partnership
16 shall mark the commencement of the marital partnership winding
17 up period, which shall terminate when the court issues an order
18 or orders which finally decide:

19 (1) Dissolution of the marriage;

20 (2) Child custody, visitation, and support;

21 (3) Spousal support; and

22 (4) Division and distribution of property and debts.



1 (b) During the marital partnership winding up period, each
2 party owes the marital partnership the fiduciary duty of loyalty
3 and the duty of care as follows:

4 (1) The duty of loyalty includes the following:

5 (A) To account to the partnership and hold as trustee
6 for it any property, profit, or benefit derived
7 by the partner in the conduct and winding up of
8 the partnership business or derived from a use by
9 the party of partnership property, including the
10 appropriation of a partnership opportunity;

11 (B) To refrain from dealing with the partnership in
12 the conduct or winding up of the partnership
13 business as or on behalf of a party having an
14 interest adverse to the partnership; and

15 (C) To refrain from competing with the partnership in
16 the conduct of the partnership business before
17 the dissolution of the partnership; and

18 (2) The duty of care to the partnership and the other
19 party in the conduct and winding up of the partnership
20 business is limited to refraining from engaging in
21 grossly negligent or reckless conduct, intentional
22 misconduct, or a knowing violation of law.



1 (c) A party shall discharge the duties to the marital
2 partnership and the other party under this part and exercise any
3 rights consistent with the obligation of good faith and fair
4 dealing.

5 (d) A party does not violate a duty or obligation under
6 this part or under the partnership agreement merely because the
7 party's conduct furthers the party's own interest.

8 (e) A reduction of the dollar value of the marital estate
9 chargeable to a divorcing party occurs when, during the marital
10 partnership winding up period, a party's action or inaction
11 causes a reduction of the dollar value of the marital estate
12 under such circumstances that the party equitably should be
13 charged with having received the dollar value of the reduction.
14 If a divorcing party chargeably reduced the dollar value of the
15 marital estate, the court shall add the dollar amount of that
16 chargeable reduction to the dollar value of the marital estate
17 and treat that dollar amount as having been awarded to the
18 divorcing party who caused that chargeable reduction."

19 SECTION 3. Section 580-10, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) When a complaint for annulment, divorce, or
22 separation, is filed in this State, [~~the court,~~] on an



1 application by either party, supported by affidavit or a
2 statement made under penalty of perjury, the court, without a
3 hearing, [~~may enjoin~~] shall:

4 (1) Order each of the parties to that action to timely
5 provide to the other party full financial and property
6 disclosure on forms provided by the court; and

7 (2) Enjoin and restrain each of the parties to that action
8 from transferring, encumbering, wasting, or otherwise
9 disposing of any of their property, whether real,
10 personal, or mixed, over and above current income,
11 except as necessary for the ordinary course of a
12 business or for usual current living expenses, without
13 the consent and concurrence of the other party to such
14 action for divorce, or further specific order of the
15 court. Where [~~such~~] restraining orders are issued
16 against the other party to the action, [~~such~~] the
17 person restrained shall be served promptly with the
18 order and shall be entitled to a prompt hearing to
19 show cause why [~~such~~] the order should not be
20 enforced."

21 SECTION 4. Section 580-47, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending subsection (a) to read:

2 "(a) Upon granting a divorce, or thereafter if, in
3 addition to the powers granted in subsections (c) and (d),
4 jurisdiction of those matters is reserved under the decree by
5 agreement of both parties or by order of court after finding
6 that good cause exists, the court may make any further orders as
7 shall appear just and equitable (1) compelling the parties or
8 either of them to provide for the support, maintenance, and
9 education of the children of the parties; (2) compelling either
10 party to provide for the support and maintenance of the other
11 party; (3) finally dividing and distributing the estate of the
12 parties, real, personal, or mixed, whether community, joint, or
13 separate; and (4) allocating, as between the parties, the
14 responsibility for the payment of the debts of the parties
15 whether community, joint, or separate, and the attorney's fees,
16 costs, and expenses incurred by each party by reason of the
17 divorce. In making these further orders, the court shall take
18 into consideration: the respective merits of the parties, the
19 relative abilities of the parties, the condition in which each
20 party will be left by the divorce, the burdens imposed upon
21 either party for the benefit of the children of the parties, the
22 dissipation, if any, of the marital estate by either party, each



1 party's fiduciary duty of loyalty and the duty of care to the
2 winding up of the marital partnership, and all other
3 circumstances of the case. In establishing the amounts of child
4 support, the court shall use the guidelines established under
5 section 576D-7. Provision may be made for the support,
6 maintenance, and education of an adult or minor child and for
7 the support, maintenance, and education of an incompetent adult
8 child whether or not the petition is made before or after the
9 child has attained the age of majority. In those cases where
10 child support payments are to continue due to the adult child's
11 pursuance of education, the agency, three months prior to the
12 adult child's nineteenth birthday, shall send notice by regular
13 mail to the adult child and the custodial parent that
14 prospective child support will be suspended unless proof is
15 provided by the custodial parent or adult child to the child
16 support enforcement agency, prior to the child's nineteenth
17 birthday, that the child is presently enrolled as a full-time
18 student in school or has been accepted into and plans to attend
19 as a full-time student for the next semester a post-high school
20 university, college, or vocational school. If the custodial
21 parent or adult child fails to do so, prospective child support
22 payments may be automatically suspended by the child support



1 enforcement agency, hearings officer, or court upon the child
2 reaching the age of nineteen years. In addition, if applicable,
3 the agency, hearings officer, or court may issue an order
4 terminating existing assignments against the responsible
5 parent's income and income assignment orders.

6 In addition to any other relevant factors considered, the
7 court, in ordering spousal support and maintenance, shall
8 consider the following factors:

- 9 (1) Financial resources of the parties;
- 10 (2) Ability of the party seeking support and maintenance
11 to meet his or her needs independently;
- 12 (3) Duration of the marriage;
- 13 (4) Standard of living established during the marriage;
- 14 (5) Age of the parties;
- 15 (6) Physical and emotional condition of the parties;
- 16 (7) Usual occupation of the parties during the marriage;
- 17 (8) Vocational skills and employability of the party
18 seeking support and maintenance;
- 19 (9) Needs of the parties;
- 20 (10) Custodial and child support responsibilities;
- 21 (11) Ability of the party from whom support and maintenance
22 is sought to meet his or her own needs while meeting



1 the needs of the party seeking support and
2 maintenance;

3 (12) Other factors which measure the financial condition in
4 which the parties will be left as the result of the
5 action under which the determination of maintenance is
6 made; and

7 (13) Probable duration of the need of the party seeking
8 support and maintenance.

9 The court may order support and maintenance to a party for
10 an indefinite period or until further order of the court;
11 provided that in the event the court determines that support and
12 maintenance shall be ordered for a specific duration wholly or
13 partly based on competent evidence as to the amount of time
14 which will be required for the party seeking support and
15 maintenance to secure adequate training, education, skills, or
16 other qualifications necessary to qualify for appropriate
17 employment, whether intended to qualify the party for a new
18 occupation, update or expand existing qualification, or
19 otherwise enable or enhance the employability of the party, the
20 court shall order support and maintenance for a period
21 sufficient to allow completion of the training, education,



1 skills, or other activity, and shall allow, in addition,
2 sufficient time for the party to secure appropriate employment."

3 2. By amending subsection (f) to read:

4 "(f) Attorney's fees and costs. The court hearing any
5 motion for orders either revising an order for the custody,
6 support, maintenance, and education of the children of the
7 parties, or an order for the support and maintenance of one
8 party by the other, or a motion for an order to enforce any such
9 order or any order made under subsection (a) of this section,
10 may make such orders requiring either party to pay or contribute
11 to the payment of the attorney's fees, costs, and expenses of
12 the other party relating to such motion and hearing as shall
13 appear just and equitable after consideration of the respective
14 merits of the parties, the relative abilities of the parties,
15 the economic condition of each party at the time of the hearing,
16 the burdens imposed upon either party for the benefit of the
17 children of the parties, the dissipation, if any, of the marital
18 estate by either party, each party's fiduciary duty of loyalty
19 and the duty of care to the winding up of the marital
20 partnership, and all other circumstances of the case."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Family Court; Divorce

Description:

Provides that the date of valuation of marital assets is the date of the filing of the divorce complaint. Defines duties owed by parties to a divorce. Defines various terms. Effective date July 1, 2050. (HB909 HD1)

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