

JAN 26 2011

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 the commercial partnership model and fraudulent
7 transfer principles, with additional definitions, procedures,
8 and tools, will assist the family court in managing difficult
9 cases. In addition, the legislature finds that changing the
10 valuation date for property division purposes to the date of the
11 dissolution of the marital partnership will provide consistency
12 and fairness while encouraging efficient, timely, and accurate
13 resolution of property division issues.

14 The purpose of this Act is to provide effective procedures
15 for property division pursuant to a divorce while simplifying
16 and codifying existing law to ensure consistency, lower barriers
17 to justice, and to assist practitioners and pro se litigants
18 with family court divorce cases.



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

4 "§580- Definitions. For the purposes of this chapter:

5 "Date of the dissolution of the marital partnership" means
6 the earliest of the following dates:

7 (1) The date of the final separation in contemplation of
8 divorce;

9 (2) The date of the filing of the complaint for divorce;

10 (3) The date one or both of the parties took a substantial
11 step toward a final separation that subsequently
12 occurred;

13 (4) The date one or both of the parties contemplated or
14 took a substantial step toward the filing of the
15 complaint for divorce that was subsequently filed; or

16 (5) The date one or both of the parties demonstrated their
17 express will to withdraw from the marital partnership.

18 "Dissipation" means the concealment or failure to disclose,
19 or the transferring, encumbering, wasting, or otherwise

20 disposing of any of 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 "Marital partnership property" means all property that is
6 not marital separate property.

7 "Marital separate property" means the following property
8 owned by one or both of the spouses at the time of the divorce,
9 including:

10 (1) All property that was excluded from the marital
11 partnership by an agreement in conformity with the
12 Uniform Premarital Agreement Act, chapter 572D;

13 (2) All property that was excluded from the marital
14 partnership by a valid contract; and

15 (3) All property that:

16 (A) Was acquired by the spouse-owner during the
17 marriage by gift or inheritance;

18 (B) Was expressly classified by a donee, heir,
19 spouse, or owner as that person's separate
20 property; and

21 (C) After acquisition, was maintained by itself or by
22 sources other than one or both of the spouses and



1 funded by sources other than marital partnership
2 income or property.

3 "Property" means anything that may be the subject of
4 ownership.

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

10 §580- Marital partnership and property division. (a)

11 The value of the property for division pursuant to section 580-
12 47 shall be set as of the date of the dissolution of the marital
13 partnership. The date of dissolution shall mark the
14 commencement of the marital partnership winding up period, which
15 shall terminate when the court finally issues a final order
16 regarding:

- 17 (1) Dissolution of the marriage;
18 (2) Child custody, visitation, and support;
19 (3) Spousal support; and
20 (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 (f) During the dissolution and winding up of the marital
20 partnership, both spouses shall be both debtor and creditor to
21 each other, for the purposes of chapter 651C, and shall be
22 subject to that chapter, except for section 651C-9. In case of



1 a conflict between this chapter and chapter 651C, this chapter
2 shall prevail."

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

5 "(a) When a complaint for annulment, divorce, or
6 separation, is filed in this State, [~~the court,~~] on an
7 application by either party, supported by affidavit or a
8 statement made under penalty of perjury, the court, without a
9 hearing, [~~may enjoin~~] shall:

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

13 (2) Enjoin and restrain each of the parties to that action
14 from transferring, encumbering, wasting, or otherwise
15 disposing of any of their property, whether real,
16 personal, or mixed, over and above current income,
17 except as necessary for the ordinary course of a
18 business or for usual current living expenses, without
19 the consent and concurrence of the other party to such
20 action for divorce, or further specific order of the
21 court. Where [~~such~~] restraining orders are issued
22 against the other party to the action, [~~such~~] the



1 person restrained shall be served promptly with the
2 order and shall be entitled to a prompt hearing to
3 show cause why [~~such~~] the order should not be
4 enforced."

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

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

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



1 divorce. In making these further orders, the court shall take
2 into consideration: the respective merits of the parties, the
3 relative abilities of the parties, the condition in which each
4 party will be left by the divorce, the burdens imposed upon
5 either party for the benefit of the children of the parties, the
6 dissipation, if any, of marital property by either party, each
7 party's fiduciary duty of loyalty and the duty of care to the
8 winding up of the marital partnership, and all other
9 circumstances of the case. In establishing the amounts of child
10 support, the court shall use the guidelines established under
11 section 576D-7. Provision may be made for the support,
12 maintenance, and education of an adult or minor child and for
13 the support, maintenance, and education of an incompetent adult
14 child whether or not the petition is made before or after the
15 child has attained the age of majority. In those cases where
16 child support payments are to continue due to the adult child's
17 pursuance of education, the agency, three months prior to the
18 adult child's nineteenth birthday, shall send notice by regular
19 mail to the adult child and the custodial parent that
20 prospective child support will be suspended unless proof is
21 provided by the custodial parent or adult child to the child
22 support enforcement agency, prior to the child's nineteenth



1 birthday, that the child is presently enrolled as a full-time
2 student in school or has been accepted into and plans to attend
3 as a full-time student for the next semester a post-high school
4 university, college, or vocational school. If the custodial
5 parent or adult child fails to do so, prospective child support
6 payments may be automatically suspended by the child support
7 enforcement agency, hearings officer, or court upon the child
8 reaching the age of nineteen years. In addition, if applicable,
9 the agency, hearings officer, or court may issue an order
10 terminating existing assignments against the responsible
11 parent's income and income assignment orders.

12 In addition to any other relevant factors considered, the
13 court, in ordering spousal support and maintenance, shall
14 consider the following factors:

- 15 (1) Financial resources of the parties;
- 16 (2) Ability of the party seeking support and maintenance
17 to meet his or her needs independently;
- 18 (3) Duration of the marriage;
- 19 (4) Standard of living established during the marriage;
- 20 (5) Age of the parties;
- 21 (6) Physical and emotional condition of the parties;
- 22 (7) Usual occupation of the parties during the marriage;



- 1 (8) Vocational skills and employability of the party
- 2 seeking support and maintenance;
- 3 (9) Needs of the parties;
- 4 (10) Custodial and child support responsibilities;
- 5 (11) Ability of the party from whom support and maintenance
- 6 is sought to meet his or her own needs while meeting
- 7 the needs of the party seeking support and
- 8 maintenance;
- 9 (12) Other factors which measure the financial condition in
- 10 which the parties will be left as the result of the
- 11 action under which the determination of maintenance is
- 12 made; and
- 13 (13) Probable duration of the need of the party seeking
- 14 support and maintenance.

15 The court may order support and maintenance to a party for
16 an indefinite period or until further order of the court;
17 provided that in the event the court determines that support and
18 maintenance shall be ordered for a specific duration wholly or
19 partly based on competent evidence as to the amount of time
20 which will be required for the party seeking support and
21 maintenance to secure adequate training, education, skills, or
22 other qualifications necessary to qualify for appropriate



1 employment, whether intended to qualify the party for a new
2 occupation, update or expand existing qualification, or
3 otherwise enable or enhance the employability of the party, the
4 court shall order support and maintenance for a period
5 sufficient to allow completion of the training, education,
6 skills, or other activity, and shall allow, in addition,
7 sufficient time for the party to secure appropriate employment."

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

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



1 property by either party, each party's fiduciary duty of loyalty
2 and the duty of care to the winding up of the marital
3 partnership, and all other circumstances of the case."

4 SECTION 5. Section 580-56, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§580-56 Property rights following dissolution of**
7 **marriage.** (a) Every decree of divorce which does not
8 specifically recite that the final division of the property of
9 the parties is reserved for further hearing, decision, and
10 orders shall finally divide the property of the parties to such
11 action.

12 (b) Following the entry of a decree of divorce in any
13 matrimonial action in which the final division of the property
14 of the parties to such action is reserved for further hearings,
15 decisions, and orders, notwithstanding the provisions of section
16 560:2-802, or any other provisions of the law to the contrary,
17 each party to such action shall continue to have all of the
18 rights to and interests in the property of the other party to
19 such action as provided by chapter 533 and chapter 560, or as
20 otherwise provided by law to the same extent he or she would
21 have had such rights or interests if the decree of divorce had
22 not been entered, until the entry of a decree or order finally



1 dividing the property of the parties to such matrimonial action,
2 or as provided in subsection (d) of this section.

3 (c) When a party to a matrimonial action has remarried
4 following the entry of a decree of divorce, in which the final
5 division of the property of the parties is reserved for further
6 hearings, decisions, and orders, but prior to the entry of a
7 decree or order finally dividing the property owned by the
8 parties to that action, notwithstanding the provisions of
9 chapter 533 and chapter 560, the spouse of such remarried party
10 shall have none of the rights or interests in the former
11 spouse's real property or personal estate as provided in chapter
12 533 and chapter 560, or as otherwise provided by law, until such
13 time as a decree or order finally dividing the property owned by
14 the parties or either of them as of the effective date of the
15 entry of the decree of divorce dissolving his or her prior
16 marriage shall be entered. Upon the entry of a decree or order
17 finally dividing the property of the parties to a matrimonial
18 action in which a decree of divorce has been entered, the spouse
19 of a party to such action who has remarried shall have all of
20 the rights of a spouse as provided by chapter 533 and chapter
21 560, or as otherwise provided by law, in and to the property of
22 the former spouse vested in such spouse by such decree or order



1 finally dividing the property of the parties or either of them,
2 as of the effective date of the entry of the decree of
3 dissolution of the prior marriage.

4 ~~[(d) Following the entry of a decree of divorce, or the~~
5 ~~entry of a decree or order finally dividing the property of the~~
6 ~~parties to a matrimonial action if the same is reserved in the~~
7 ~~decree of divorce, or the elapse of one year after entry of a~~
8 ~~decree or order reserving the final division of property of the~~
9 ~~party, a divorced spouse shall not be entitled to dower or~~
10 ~~curtesy in the former spouse's real estate, or any part thereof,~~
11 ~~nor to any share of the former spouse's personal estate.]"~~

12 SECTION 6. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect upon its approval.

18

INTRODUCED BY:  _____



Report Title:

Family Court; Divorce

Description:

Provides that the date of valuation of marital assets is the date of the dissolution of the marital partnership. Defines duties owed by parties to a divorce. Requires the court to consider dissipation when determining property division and support orders. Defines various terms.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

