
A BILL FOR AN ACT

RELATING TO THE PROBATE CODE.

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

1 SECTION 1. Chapter 560, Hawaii Revised Statutes, is
2 amended by adding two new sections to article III to be
3 appropriately designated and to read as follows:

4 "§560:3-A Restrictions on donative transfers. (a) Except
5 as provided by section 560:3-B, no provision of any instrument
6 shall be valid to make any donative transfer to any of the
7 following:

- 8 (1) The person who drafted the instrument;
9 (2) Any partner or shareholder of any law partnership or
10 law corporation in which the person described in
11 paragraph (1) has an ownership interest, and any
12 employee of that law partnership or law corporation;
13 (3) Any person who has a fiduciary relationship with the
14 transferor, including but not limited to a conservator
15 or trustee, who transcribes the instrument or causes
16 it to be transcribed;



1 (4) A care custodian of an incapacitated person who is the
2 transferor; or

3 (5) A person who is related by blood or marriage to, is a
4 civil union partner of, is a cohabitant with, is a
5 reciprocal beneficiary of, or is an employee of, a
6 person who is described in paragraph (1), (3), or (4).

7 (b) For the purposes of this section, a person who is
8 related by blood or marriage to a person includes the following:

- 9 (1) The person's spouse or predeceased spouse;
- 10 (2) Relatives within the third degree of the person and of
11 the person's spouse; and
- 12 (3) The spouse of any person described in paragraph (2).

13 (c) For the purposes of this section:

14 "Care custodian" means a person who provides a broad range
15 of paid or unpaid assistance for an incapacitated person.

16 "Incapacitated person" means the same as defined in section
17 560:5-102.

18 §560:3-B Restricted donative transfers; permitted when.

19 (a) Section 560:3-A shall not apply when:

- 20 (1) The transferor is related by blood or marriage to, is
21 a cohabitant with, is the registered civil union



1 partner, or is a reciprocal beneficiary of the
 2 transferee or the person who drafted the instrument;
 3 provided that this paragraph shall retroactively apply
 4 to an instrument that becomes irrevocable on or after
 5 December 31, 2018;

6 (2) The instrument has been reviewed by an independent
 7 attorney who:

8 (A) Counsels the transferor about the nature and
 9 consequences of the intended transfer;

10 (B) Attempts to determine if the intended consequence
 11 is the result of fraud, menace, duress, or undue
 12 influence; and

13 (C) Signs and delivers to the transferor an original
 14 certificate in substantially the following form,
 15 with a copy delivered to the person who drafted
 16 the instrument:

17 CERTIFICATE OF INDEPENDENT REVIEW

18 I, _____ (attorney's name) _____, have reviewed
 19 _____ (name of instrument) _____ and counseled my
 20 client, _____ (name of client) _____, on the nature
 21 and consequences of the transfer, or transfers, of property to
 22 _____ (name of potentially disqualified person) _____
 23 contained in the instrument. I am so disassociated from the
 24 interest of the transferee as to be in a position to advise my
 25 client independently, impartially, and confidentially as to the



1 consequences of the transfer. On the basis of this counsel, I
2 conclude that the transfer, or transfers, in the instrument that
3 otherwise might be invalid under section 560:3-A of the Probate
4 Code are valid because the transfer, or transfers, are not the
5 product of fraud, menace, duress, or undue influence.
6
7

8 (Name of Attorney) (Date);
9

10 Any attorney whose written engagement signed by
11 the client is expressly limited solely to the
12 preparation of a certificate under this
13 subparagraph, including the prior counseling,
14 shall not be considered to otherwise represent
15 the client;

16 (3) After full disclosure of the relationships of the
17 persons involved, the instrument is approved pursuant
18 to an order by a court with competent jurisdiction;

19 (4) A court with competent jurisdiction determines, upon
20 clear and convincing evidence, but not based solely
21 upon the testimony of any person described in section
22 560:3-A(a), that the transfer was not the product of
23 fraud, menace, duress, or undue influence; provided
24 that if the court finds that the transfer was the
25 product of fraud, menace, duress, or undue influence,



1 the disqualified person shall bear all costs of the
2 proceeding, including reasonable attorneys' fees;
3 provided further that this paragraph shall only apply
4 to:

5 (A) Any instrument described by section 560:3-A(a)
6 other than one making a transfer to a person
7 described in section 560:3-A(a) (1);

8 (B) Any instrument executed on or before December 31,
9 2018, by a person who was a resident of this
10 State at the time the instrument was executed; or

11 (C) Any instrument executed by a resident of Hawaii
12 who was not a resident at the time the instrument
13 was executed;

14 (5) The transferee is a federal, state, or local public
15 entity, an entity that qualifies for an exemption from
16 taxation under section 501(c) (3) or 501(c) (19) of the
17 Internal Revenue Code of 1986, as amended, or a trust
18 holding an interest for this entity, but only to the
19 extent of the interest of the entity, or the trustee
20 of this trust; provided that this paragraph shall



1 retroactively apply to an instrument that becomes
2 irrevocable on or after December 31, 2018;

3 (6) The transfer does not exceed the sum of twenty
4 thousand dollars; provided that this paragraph shall
5 not apply if the total value of the property in the
6 estate of the transferor does not exceed the amount
7 prescribed in Section 560:3-1205; or

8 (7) The transfer is made by an instrument executed by a
9 nonresident of Hawaii who was not a resident at the
10 time the instrument was executed, and that was not
11 signed within Hawaii.

12 (b) For the purposes of this section, a person who is
13 related by blood or marriage shall include persons within the
14 fifth degree or heirs of the transferor.

15 (c) For the purposes of this section, "cohabitant" means a
16 person living in the same household as the transferor for more
17 than eighteen months."

18 SECTION 2. New statutory material is underscored.

19 SECTION 3. This Act shall take effect on January 28, 2081.



Report Title:

Probate Code; Donative Transfers; Restrictions

Description:

Establishes restrictions on donative transfers to protect transferors from coercive, exploitative, or otherwise improper transfers benefitting persons involved with drafting the transfer instrument or persons who have significant influence over the transferor. (SB1342 HD1)

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

