

## ACT 7

A Bill for an Act Amending Chapter 317, Revised Laws of Hawaii 1955, Relating to Unadministered Small Estates.

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

SECTION 1. Section 317-50, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

**“Section 317-50. Clerk of circuit court to administer.** If a person dies leaving property in this State of a total value not exceeding \$3,000, and an executor or administrator of such estate has not been appointed in the State, the clerk of the circuit court of the circuit in which such person was residing or domiciled at the time of his death or left property may, upon the verified petition of such clerk or of any person interested, obtain an order authorizing him to administer such estate, and, as such administrator or ancillary administrator, he shall collect and receive such property and administer the same. Such order may be made without notice or hearing, at the discretion of the court. Except as otherwise specifically required or authorized by law or where he may be interested as an heir, legatee or devisee, no clerk of any circuit court shall act as administrator of any estate where the value of the same is in excess of \$3,000; but this prohibition shall not prohibit the clerk from proceeding with the administration of any estate valued in excess of \$3,000 where such excess first becomes known subsequent to his appointment as administrator, or ancillary administrator, provided such excess does not exceed \$2,000; provided, further, that the court may, in its discretion, allow any administration begun under this section by the clerk of the court to be completed by said clerk even though the total estate exceeds \$5,000. No fees shall be allowed the clerk, save and except as set forth in section 317-57.”

SECTION 2. Section 317-51, Revised Laws of Hawaii 1955, is hereby repealed.

SECTION 3. Chapter 317 of the Revised Laws of Hawaii 1955, as amended, is hereby amended by adding a new section thereto to be appropriately numbered and to read as follows:

**“Section 317- . Estates less than \$100.**

(a) **Collection by distributees upon affidavit.** The distributees of an estate shall be entitled thereto without awaiting the appointment of a personal representative or the probate of a will when a decedent leaves no real property, nor interest therein nor lien thereon, in this State, and the total value of the decedent’s property in this State is less than \$100 upon furnishing any person owing any money, having

custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, or right, an affidavit showing the right of the distributees to receive such money or property or to have evidence transferred.

(b) **Effect of affidavit; release; suit.** The person making payment, delivery, transfer or issuance pursuant to the affidavit described in subsection (a) shall be released to the same extent as if made to a personal representative of the decedent and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided, it may be recovered or compelled in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit."

SECTION 4. Section 317-57, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

**"Section 317-57. Exemption from costs.** All proceedings had under and by virtue of this part, shall be free from all costs of court, except that the clerk may charge the actual expenses for advertising the notice specified in section 317-52, the advertising, posting or service fees required in carrying out any order of the court, including orders relating to the sale of real or personal property, and any expenses reasonably necessary for the preservation, disposal, distribution and administration of the assets of the estate, together with a fee of three per cent, of the market value of the gross estate, the fee to be paid into the treasury of the State as a government realization from any available assets of the estate; provided, that in the event that the administration is completed by another personal representative, as provided in section 317-50; no fee shall be charged by the clerk."

SECTION 5. Section 317-58, Revised Laws of Hawaii 1955, is hereby amended by deleting therefrom the sum "\$1,500" and substituting in lieu thereof the sum "\$3,000."

SECTION 6. Section 317-59, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

**"Section 317-59. Estates not in excess of \$700.** Upon the death of any person dying intestate and leaving only personal property in the State not exceeding \$700 and where an administrator has not been appointed in the State, a clerk of the circuit court of the circuit wherein such person was domiciled or if not domiciled in the State, the circuit wherein he was residing or had personal property at the time of his death, may, upon the filing with the clerk by any interested person of a death certificate issued by a government agency and of an affidavit setting forth the above facts, the names of the heirs if known and other pertinent facts as required by the clerk, collect or otherwise reduce to possession or turn into cash all assets of the

estate. If after payment of funeral expenses as a preferred claim against the estate there are assets remaining, the clerk shall give notice to creditors and heirs as provided by section 317-52 by posting, or if there are sufficient funds, by posting and advertising, and if after the period and distribution of assets to creditors of deceased persons who have filed proper claims there are assets remaining, then the clerk upon the facts contained in the affidavit as to heirship, shall deliver the assets to the personal representative, if any, or if no personal representative has been appointed, then to the heirs in accordance with the statutes of descent of the State. If no creditors, personal representative or heirs appear or are found within sixty days of the notice, the clerk shall convert all personal property into cash and forthwith deposit the same into the treasury of the State, in accordance with section 317-56."

**SECTION 7.** This Act shall take effect upon its approval.  
(Approved May 3, 1965.) **H.B. 1082.**