

## ACT 76

H. B. 265.

A Bill for an Act Amending Chapter 324 of the Revised Laws of Hawaii 1955, as Amended, Relating to Divorce, Annulment and Separation.

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

SECTION 1. Section 324-20 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended in the following respects:

(a) By deleting from paragraphs (i) and (j) thereof the phrase "no reconciliation has been effected, and the living together of the parties is insupportable" and substituting therefor the phrase "and no reconciliation has been effected."

(b) By adding thereto immediately following paragraph (j) a new paragraph to be lettered "(k)" and to read as follows:

"(k) Upon the application of either party, when the parties have lived separate and apart for a continuous period of more than three years immediately preceding the application, there is no reasonable likelihood that cohabitation will be resumed, and the court is satisfied that, in the particular circumstances of the case, it would not be harsh and oppressive to the defendant or contrary to the public interest to grant a divorce on this ground on the complaint of the plaintiff."

SECTION 2. Section 324-21 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

**“§ 324-21. Jurisdiction; hearing.** Exclusive original jurisdiction in matters of annulment, divorce and separation, subject to the provisions of paragraph (f) of section 215-17 as to change of venue, and subject also to appeal according to law, is conferred upon the circuit judge or judges severally of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least one year next preceding the application therefor. A person who may be residing on any military or federal base, installation or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section.”

SECTION 3. Section 324-27 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“§ 324-27. **Guardian ad litem for incompetent defendant.** In any case where the court has reason to believe that the defendant in a matrimonial action is not fully competent to conduct his defense or to comprehend the nature of the proceedings, the court may appoint a guardian ad litem to represent the interests of the defendant. The court may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify.”

SECTION 4. Chapter 324, Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding thereto a new section to be numbered “324-31.5” and to read as follows:

“§ 324-31.5. **Fund judgment; nunc pro tunc entry; validation of certain marriages.** Whenever either party to a divorce action is entitled to a final decree dissolving the bonds of matrimony, but by mistake, negligence, or inadvertence the final decree has not been entered, the court on motion of either party or upon its own motion may cause a final decree to be entered granting the divorce as of the date when the decree could have been entered. Upon the entry of such final decree, the parties to the divorce action shall be deemed to have been restored to the status of single persons as of the date set forth in the final decree, and any marriage of either party after such date shall not be subject to attack on the grounds that the marriage was contracted at a time when such party was undivorced in such divorce action. The court may cause a final decree to be entered nunc pro tunc as aforesaid even though another final decree may have been entered previously but by mistake, negligence, or inadvertence was not entered as soon as a final decree could have been entered.”

SECTION 5. Section 324-37 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“§ 324-37. **Support orders; division of property.** Upon granting a divorce, the court may make such further orders as shall appear just and equitable compelling the parties or either of them to provide for the support, maintenance and education of the children of the marriage and compelling either party to provide for the support and maintenance of the other party and finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate. In making such further orders, the court shall take into consideration the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the marriage, and all other circumstances of the case, but no such final division of estate shall impair the power of the court to revise allowances for children. An order as to the custody, management, and division of property shall be final and conclusive as to both parties subject only to appeal as in civil cases, and provided that the court shall

at all times, including during the pendency of any appeal, have the power to grant any and all restraining orders that may be necessary to protect the parties and secure justice.

Upon the motion of either party supported by an affidavit setting forth in particular a material change in the physical or financial circumstances of either party, or upon the motion of the party against whom an order was entered supported by an affidavit setting forth in particular that the other party, although able and capable of substantially rehabilitating himself or herself financially, has wilfully failed to do so, the moving party may, in the discretion of the court, and upon adequate notice to the other party, be granted a hearing, and the fact that the moving party is in default or arrears in the performance of any act or payment of any sums theretofore ordered to be done or paid by him or her shall not necessarily constitute a bar to the granting of the hearing. The court, upon such hearing, shall consider all proper circumstances in determining the amount of the allowance, if any, which shall thereafter be ordered.”

SECTION 6. Section 324-38 of the Revised Laws of Hawaii 1955, as amended, is hereby repealed.

SECTION 7. This Act shall take effect upon its approval.  
(Approved May 15, 1967.)