ACT 158

S.B. NO. 483

A Bill for an Act Relating to the Uniform Probate Code.

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

PART I

SECTION 1. The purpose of this Act is to update articles I through IV of the Uniform Probate Code, with appropriate amendments to reflect Hawai‘i law and practice where relevant. Adopted in Hawai‘i in 1969 and last updated in 1996, the Uniform Probate Code is a national codification of the law of probate, which provides for greater clarity and uniformity in probate law and interpretation. This Act makes necessary updates to the Uniform Probate Code to adjust for inflation, provide additional clarity, resolve issues that have arisen in probate practice, and address societal changes in familial relations.

PART II

SECTION 2. Chapter 560, Hawaii Revised Statutes, is amended by adding a new subpart to article II, part 1, to be appropriately designated and to read as follows:

" . PARENT-CHILD RELATIONSHIP

§560:2-A Definitions. In this subpart:

"Adoptee" means an individual who is adopted.

"Child of assisted reproduction" means a child conceived by means of assisted reproduction by an individual other than a gestational carrier under section 560:2-G.

"Divorce" means an annulment, a dissolution, or a declaration of invalidity of a marriage.

"Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including:

(1) Fulfilling parental responsibilities toward the child;
(2) Materially participating in the child's upbringing; and
(3) Residing with the child in the same household as a regular member of that household.

"Genetic father" means the individual whose sperm fertilized the egg of a child's genetic mother; provided that if the father-child relationship is established by the presumption of paternity under chapter 584, "genetic father" means only the individual for whom that relationship is established.

"Genetic mother" means the individual whose egg was fertilized by the sperm of a child's genetic father.

"Genetic parent" means a child's genetic father or genetic mother.

"Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

"Relative" means a grandparent or a descendant of a grandparent.

§560:2-B Effect of parent-child relationship. Except as otherwise provided in section 560:2-E(b) through (e), if a parent-child relationship exists or is established under this subpart, the parent shall be deemed a parent of the child, and the child shall be deemed a child of the parent, for the purpose of intestate succession.

§560:2-C No distinction based on marital status. Except as otherwise provided in sections 560:2-114, 560:2-E, 560:2-F, or 560:2-G, a parent-child relationship shall be deemed to exist between a child and the child's genetic parents, regardless of the parents' marital status.

§560:2-D Adoptee and adoptee's adoptive parent or parents. A parent-child relationship shall be deemed to exist between an adoptee and the adoptee's adoptive parent or parents. For purposes of this section:

(1) An individual who is in the process of being adopted by a married couple or reciprocal beneficiaries when one of the spouses or reciprocal beneficiaries dies shall be treated as adopted by the deceased spouse or reciprocal beneficiary if the adoption is subsequently granted to the decedent's surviving spouse or reciprocal beneficiary; and

(2) A child of a genetic parent who is in the process of being adopted by a genetic parent's spouse or reciprocal beneficiary when the spouse or reciprocal beneficiary dies shall be treated as adopted by the deceased spouse or reciprocal beneficiary if the genetic parent survives the deceased spouse or reciprocal beneficiary by one hundred twenty hours; provided that a child shall be treated as adopted by a deceased spouse or reciprocal beneficiary for the purposes of this paragraph if, after a parent-child relationship is established between a child of assisted reproduction and a parent under section 560:2-F, or between a gestational child and a parent under section 560:2-G, the child is in the process of being adopted by the parent's spouse or reciprocal beneficiary when the spouse or reciprocal beneficiary dies.

§560:2-E Adoptee and adoptee's genetic parents. (a) Except as otherwise provided in subsections (b) through (e), a parent-child relationship shall not be deemed to exist between an adoptee and the adoptee's genetic parents.

(b) A parent-child relationship shall be deemed to exist between an individual who is adopted by the spouse or reciprocal beneficiary of either genetic parent and:

(1) The genetic parent whose spouse or reciprocal beneficiary adopted the individual; and

(2) The other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(c) A parent-child relationship shall be deemed to exist between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse, reciprocal beneficiary, or surviving spouse or reciprocal beneficiary of a relative of a genetic parent, but only for the purpose of the right

of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

(d) A parent-child relationship shall be deemed to exist between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

(e) If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under section 560:2-F, or between a gestational child and a parent or parents under section 560:2-G, the child is adopted by another or others, the child's parent or parents under section 560:2-F or 560:2-G shall be treated as the child's genetic parent or parents for the purpose of this section.

§560:2-F Child conceived by assisted reproduction other than a child born to gestational carrier. (a) In this section:

"Birth mother" means an individual, other than a gestational carrier under section 560:2-G, who gives birth to a child of assisted reproduction. "Birth mother" is not limited to an individual who is the child's genetic mother.

"Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. "Third-party donor" does not include:

(1) A spouse who provides sperm or eggs that are used for assisted reproduction by a gestational spouse;

(2) The birth mother of a child of assisted reproduction; or

(3) An individual who has been determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.

(b) A parent-child relationship shall not be deemed to exist between a child of assisted reproduction and a third-party donor.

(c) A parent-child relationship shall be deemed to exist between a child of assisted reproduction and the child's birth mother.

(d) Except as otherwise provided in subsections (i) and (j), a parent-child relationship shall be deemed to exist between a child of assisted reproduction and the spouse of the child's birth mother if the spouse provided the sperm that the birth mother used during the spouse's lifetime for assisted reproduction.

(e) A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction shall presumptively establish a parent-child relationship between the child and that individual.

(f) Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship shall be deemed to exist between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with the intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child shall be established if the individual:

(1) Signed a record, before or after the child's birth, that, considering all the facts and circumstances, evidences the individual's consent; or

(2) In the absence of a signed record under paragraph (1):

(A) Functioned as a parent of the child no later than two years after the child's birth;

(B) Intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or

(C) Intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.

(g) For the purpose of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached eighteen years of age.

(h) For the purpose of subsection (f)(2):

(1) If the birth mother is married and no divorce proceeding is pending, or in a reciprocal beneficiary relationship, in the absence of clear and convincing evidence to the contrary, the birth mother's spouse or reciprocal beneficiary shall be deemed to satisfy subsection (f)(2)(A) or (B); and

(2) If the birth mother is a surviving spouse and at the death of the birth mother's deceased spouse no divorce proceeding was pending, or is the surviving reciprocal beneficiary, in the absence of clear and convincing evidence to the contrary, the birth mother's deceased spouse or reciprocal beneficiary shall be deemed to satisfy subsection (f)(2)(B) or (C).

(i) If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction shall not be treated as a child of the birth mother's former spouse, unless the former spouse consented in a record that, if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

(j) If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction shall not be treated as a child of that individual, unless the individual subsequently satisfies subsection (f).

(k) If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child shall be treated as in gestation at the individual's death for purposes of section 560:2-104(b)(2) if the child is:

(1) In utero no later than thirty-six months after the individual's death; or

(2) Born no later than forty-five months after the individual's death.

§560:2-G Child born to gestational carrier. (a) In this section:

"Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which an individual agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (e).

"Gestational carrier" means an individual who is not an intended parent who gives birth to a child under a gestational agreement. "Gestational carrier" is not limited to an individual who is the child's genetic mother.

"Gestational child" means a child born to a gestational carrier under a gestational agreement.

"Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. "Intended parent" is not limited to an individual who has a genetic relationship with the child.

(b) A parent-child relationship shall be deemed to be conclusively established by a court order designating the parent or parents of a gestational child.

(c) A parent-child relationship between a gestational child and the gestational child's carrier shall not be deemed to exist unless the gestational carrier is:

(1) Designated as a parent of the child in a court order, as described in subsection (b); or

(2) The child's genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.

(d) In the absence of a court order under subsection (b), a parent-child relationship shall be deemed to exist between a gestational child and an intended parent who:

(1) Functioned as a parent of the child no later than two years after the child's birth; or

(2) Died while the gestational carrier was pregnant if:

(A) There were two intended parents, and the other intended parent functioned as a parent of the child no later than two years after the child's birth;

(B) There were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse, reciprocal beneficiary, or surviving spouse or reciprocal beneficiary of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or

(C) There was no other intended parent and a relative of the deceased intended parent, or the spouse, reciprocal beneficiary, or surviving spouse or reciprocal beneficiary of a relative of the deceased intended parent, functioned as a parent of the child no later than two years after the child's birth.

(e) In the absence of a court order under subsection (b), a parent-child relationship shall be deemed to exist between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:

(1) A record signed by the individual that, considering all the facts and circumstances, evidences the individual's intent; or

(2) Other facts and circumstances establishing the individual's intent by clear and convincing evidence.

(f) Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence of a contrary intent, an individual shall be deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:

(1) The individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;

(2) When the individual deposited the sperm or eggs, the individual was married, and no divorce proceeding was pending; and

(3) The individual's spouse or reciprocal beneficiary, or surviving spouse or reciprocal beneficiary, functioned as a parent of the child no later than two years after the child's birth.

(g) The presumption under subsection (f) shall not apply if there is:
(1) A court order under subsection (b); or
(2) A signed record that satisfies subsection (e)(1).
(h) If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child shall be treated as in gestation at the individual's death for purposes of section 560:2-104(b)(2) if the child is:
(1) In utero no later than thirty-six months after the individual's death; or
(2) Born no later than forty-five months after the individual's death.
(i) This section shall not affect other laws of this State governing the enforceability or validity of a gestational agreement.

§560:2-H Equitable adoption. This subpart shall not affect the doctrine of equitable adoption."

SECTION 3. Chapter 560, Hawaii Revised Statutes, is amended by designating sections 560:2-101 to 560:2-114 under article II, part 1, as subpart A and inserting a title before section 560:2-101 to read as follows:

"A. GENERAL PROVISIONS"

PART III

SECTION 4. Chapter 560, Hawaii Revised Statutes, is amended by adding two new sections to article II, part 8, to be appropriately designated and to read as follows:

"**§560:2- Reformation to correct mistakes.** The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

§560:2- Modification to achieve transferor's tax objectives. To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect."

SECTION 5. Chapter 560, Hawaii Revised Statutes, is amended by adding a new part to article III to be appropriately designated and to read as follows:

"PART . UNIFORM ESTATE TAX APPORTIONMENT ACT

§560:3-A Short title. This part may be cited as the Uniform Estate Tax Apportionment Act.

§560:3-B Definitions. In this part:
"Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned, reduced by:
(1) Any claim or expense allowable as a deduction for purposes of the tax;

(2) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or is otherwise deductible or exempt; and

(3) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

"Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and any interest and penalties associated with the tax. "Estate tax" does not include an inheritance tax, income tax, or generation-skipping transfer tax incurred on a direct skip taking effect at death.

"Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Ratable" or "ratably" means apportioned or allocated pro rata, according to the relative values of interests to which the term is applied.

"Time-limited interest" means an interest in property that terminates on a lapse of time or on the occurrence or nonoccurrence of an event or that is subject to the exercise of discretion that could transfer a beneficial interest to another person. "Time-limited interest" does not include a cotenancy unless the cotenancy itself is a time-limited interest.

"Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

§560:3-C Apportionment by will or other dispositive instrument. (a) Except as otherwise provided in subsection (c), the following rules shall apply:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax shall be apportioned accordingly;

(2) Any portion of an estate tax not apportioned pursuant to paragraph (1) shall be apportioned in accordance with any revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provisions in the most recently dated instrument shall prevail. For purposes of this paragraph:

(A) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) The date of an amendment to a revocable trust instrument is the date of the amendment instrument only if the amendment contains an apportionment provision; and

(3) If any portion of an estate tax is not apportioned pursuant to paragraph (1) or (2) and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is, or is not, to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision shall control the apportionment of the tax to that interest.

(b) Subject to subsection (c), and unless the decedent expressly and unambiguously directs the contrary, the following rules shall apply:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(A) The tax attributable to the exonerated interest shall be apportioned among the other persons receiving interests passing under the instrument; or

(B) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency shall be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax;

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property, a portion of which qualifies for a marital or charitable deduction, the estate tax shall first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient;

(3) Except as otherwise provided in paragraph (4), if any apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in a specified property under section 560:3-G, the tax shall be apportioned to the principal of the property, regardless of the deductibility of some of the interests in that property; and

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist, and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax shall first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

(c) A provision that apportions an estate tax shall be deemed ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

§560:3-D Statutory appointment of estate taxes. To the extent that apportionment of an estate tax is not controlled by an instrument described in section 560:3-C, and except as otherwise provided in sections 560:3-F and 560:3-G, the following rules shall apply:

(1) Subject to paragraphs (2), (3), and (4), the estate tax shall be apportioned ratably to each person that has an interest in the apportionable estate;

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death shall be charged to the person to which the interest in property is transferred;

(3) If property is included in the decedent's gross estate because of section 2044 of the Internal Revenue Code of 1986, as amended, or any

similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate shall be apportioned ratably among the holders of interest in the property. The balance of the tax, if any, shall be apportioned ratably to each other person having an interest in the apportionable estate; and

(4) Except as otherwise provided in section 560:3-C(b)(4) and except as to property to which section 560:3-G applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest shall be apportioned, without further apportionment, to the principal of that property.

§560:3-E Credits and referrals. Except as otherwise provided in sections 560:3-F and 560:3-G, the following rules shall apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes, or from estate taxes paid on property previously taxed, shall inure ratably to the benefit of all persons to which the estate tax is apportioned;

(2) A credit for state or foreign estate taxes shall inure ratably to the benefit of all persons to which the estate tax is apportioned; provided that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, shall inure to the benefit of the beneficiary; and

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral shall inure ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge shall be allocated ratably among the persons receiving an interest in the property.

§560:3-F Insulated property; advancement of tax. (a) In this section:

"Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

"Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsulated holders under subsection (c).

"Insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

"Uninsulated holder" means a person who has an interest in uninsulated property.

"Uninsulated property" means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced pursuant to subsection (c) by persons holding interests in uninsulated property subject to a time-limited interest other than property to which section 560:3-G applies, the tax shall be advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to section 560:3-I(b) and (d), an estate tax attributable to interests in insulated property shall be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency shall be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under paragraph (2) of the definition of "apportionable estate" in section 560:3-B as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(e) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon a distribution of insulated property for which, pursuant to subsection (d), the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

§560:3-G Apportionment and recapture of special elective benefits. (a) In this section:

"Special elective benefit" means a reduction in an estate tax obtained by an election for:

(1) A reduced valuation of specified property that is included in the gross estate;

(2) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(3) An exclusion from the gross estate of specified property.

"Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax shall be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made shall be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction shall reduce ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit shall be charged to the persons that are liable for the additional tax under the law providing for the recapture.

§560:3-H Securing payment of estate tax from property in possession of fiduciary. (a) A fiduciary may defer a distribution of property until the

fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

§560:3-I Collection of estate tax by fiduciary. (a) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in section 560:3-F, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate that is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate; and

(3) Any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person pursuant to this part may not exceed the value of the person's interest.

§560:3-J Right of reimbursement. (a) A person required under section 560:3-I to pay an estate tax greater than the amount due from the person under section 560:3-C or 560:3-D shall have a right to reimbursement from another person to the extent that the other person has not paid the tax required by section 560:3-C or 560:3-D and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under section 560:3-I(b).

(b) A fiduciary may enforce the right of reimbursement under subsection (a) on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

§560:3-K Action to determine or enforce part. A fiduciary, transferee, or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce this part.

§560:3-L Delayed application. (a) Sections 560:3-C to 560:3-G shall not apply to the estate of a decedent who dies on or within three years after the effective date of this part, nor to the estate of a decedent who dies more than three years after the effective date of this part if the decedent continuously lacked testamentary capacity from the expiration of the three-year period until the date of death.

(b) For the estate of a decedent who dies on or after the effective date of this part to which sections 560:3-C to 560:3-G do not apply, estate taxes shall be apportioned pursuant to the law in effect immediately before the effective date of this part."

PART IV

SECTION 6. Section 560:1-201, Hawaii Revised Statutes, is amended as follows:

1. By adding three[1] new definitions to be appropriately inserted and to read:

""Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

"Probate proceeding" means a formal or informal proceeding to probate a will, formal or informal proceeding to appoint a personal representative, or formal proceeding to adjudicate intestacy.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Sign" means, with present intent to authenticate or adopt a record other than a will, to:

(1) Execute or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an electronic symbol, sound, or process."

2. By amending the definition of "beneficiary" to read:

""Beneficiary", as it relates to a [~~trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary~~]:

(1) "Beneficiary designated in a governing instrument", [~~includes~~] means a [~~grantee~~]:

(A) Grantee of a deed[~~, a devisee, a trust~~];

(B) Devisee;

(C) Trust beneficiary[~~, a beneficiary~~];

(D) Beneficiary of a beneficiary designation[~~, a donee,~~];

(E) Donee, appointee, or taker in default of a power of appointment[~~,~~]; or [~~a person~~]

(F) Person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised[~~,~~];

(2) "Beneficiary of a beneficiary designation", means a beneficiary of:

(A) An insurance or annuity policy;

(B) An account with POD designation;

(C) A security registered in beneficiary form (TOD);

(D) A transfer on death deed;

(E) A pension, profit-sharing, retirement, or similar benefit plan; or

(F) Any other nonprobate transfer at death;

(3) "Charitable trust", means any person entitled to enforce the trust; and

(4) "Trust beneficiary", means:

(A) A person who has any present or future interest, vested or contingent; or

(B) The owner of an interest by assignment or other transfer."

3. By amending the definition of "issue" to read:

""Issue" of [~~a person~~] an individual means descendant as defined in this section."

SECTION 7. Section 560:1-401, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney, or, in the case of a minor or an incapacitated person, the minor's or incapacitated person's parent or guardian, as appropriate. Notice shall be given:

(1) By mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered, or ordinary [~~first class~~] first-class mail addressed to the person being notified at the post office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known;

(2) By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; or

(3) If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for [~~three~~] two consecutive weeks, a copy thereof in a newspaper having general circulation in the judicial circuit where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing."

SECTION 8. Section 560:1-403, Hawaii Revised Statutes, is amended to read as follows:

"§560:1-403 Pleadings; when parties bound by others; notice. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following rules shall apply:

(1) Interests to be affected shall be described in pleadings [~~which~~] that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in [~~other~~] another appropriate manner;

(2) [~~Persons are~~] A person shall be bound by [~~orders~~] an order binding [~~others~~] another in the following cases:

(A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power;

(B) To the extent there is no conflict of interest between them or among persons represented, [~~orders binding a~~] an order binding:

(i) A conservator shall bind the person whose estate the conservator controls; [~~orders binding a~~]

(ii) A guardian shall bind the ward if no conservator of the ward's estate has been appointed; [~~orders binding a~~]

(iii) A trustee shall bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a [~~prior~~] former fiduciary, and in proceedings involving creditors or other third parties; [~~and orders binding a~~]

(iv) A personal representative shall bind persons interested in the undistributed assets of a decedent's estate in ac-

tions or proceedings by or against the estate[~~. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the parent's minor child~~]; and

(v) A sole holder or all co-holders of a general testamentary power of appointment shall bind other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power; and

(C) [~~An~~] Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person [~~who is not otherwise represented is~~] shall be bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding;

(3) If no conservator or guardian has been appointed, a parent may represent a minor child;

[~~(3)~~] (4) Notice is required as follows:

(A) [~~Notice~~] The notice as prescribed by section 560:1-401 shall be given to every interested person or to one who can bind an interested person as described in paragraph (2)(A) or (2)(B). Notice may be given both to a person and to another who may bind the person; and

(B) Notice is given to unborn or unascertained persons[~~,~~] who are not represented under paragraph (2)(A) or (2)(B)[~~,~~] by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons; and

[~~(4)~~] (5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

SECTION 9. Section 560:2-102, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-102 Share of spouse or reciprocal beneficiary. The intestate share of a decedent's surviving spouse or reciprocal beneficiary [~~is:~~] shall be:

(1) The entire intestate estate if:

(A) No descendant or parent of the decedent survives the decedent; or

(B) All of the decedent's surviving descendants are also descendants of the surviving spouse or reciprocal beneficiary and there is no other descendant of the surviving spouse or reciprocal beneficiary who survives the decedent;

(2) The first [~~$200,000,~~] $400,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(3) The first [~~$150,000,~~] $330,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse or reciprocal beneficiary and the surviving spouse or reciprocal beneficiary has one or more surviving descendants who are not descendants of the decedent; or

(4) The first [~~$100,000,~~] $220,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse or reciprocal beneficiary."

SECTION 10. Section 560:2-103, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-103 Share of heirs other than surviving spouse or reciprocal beneficiary. (a) Definitions. In this section:

"Deceased parent", "deceased grandparent", or "deceased spouse" means a parent, grandparent, or spouse, as applicable, who either predeceased the decedent or is deemed under this article to have predeceased the decedent.

"Surviving parent", "surviving grandparent", "surviving spouse", "surviving reciprocal beneficiary", or "surviving descendant" means a parent, grandparent, spouse, reciprocal beneficiary, or descendant who neither predeceased the decedent nor is deemed under this article to have predeceased the decedent.

(b) Heirs other than surviving spouse or reciprocal beneficiary. Any part of the intestate estate not passing to the decedent's surviving spouse or reciprocal beneficiary under section 560:2-102[~~, or the entire intestate estate if there is no surviving spouse or reciprocal beneficiary, passes in the following order to the individuals designated below who survive the decedent:~~

~~(1) To the decedent's descendants by representation;~~

~~(2) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent; provided, however, if the decedent is a minor, and if it is shown by clear and convincing evidence that any parent has:~~

~~(A) Deserted the child without affording means of identification for a period of at least ninety days;~~

~~(B) Failed to communicate with the child when able to do so for a period of at least one year when the child is in the custody of another; or~~

~~(C) Failed to provide for care and support of the child when able to do so for a period of at least one year when the child is in the custody of another despite a child support order requiring such support;~~

~~such parent shall be deemed to have predeceased the decedent;~~

~~(3) If there is no surviving descendant or parent entitled to inherit, to the descendants of the decedent's parents or either of them by representation; and~~

~~(4) If there is no surviving descendant, parent entitled to take, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.~~]

shall pass to the decedent's descendants or parents as provided in subsections (c) and (d). If there is no surviving spouse or reciprocal beneficiary, the entire

interest estate shall pass to the decedent's descendants, parents, or other heirs as provided in subsections (c) through (j).

(c) Surviving descendant. If a decedent is survived by one or more descendants, any part of the intestate estate not passed to the surviving spouse or reciprocal beneficiary shall pass by representation to the decedent's surviving descendants.

(d) Surviving parent. If a decedent is not survived by a descendant but is survived by one or more parents, any part of the intestate share not passing to the surviving spouse or reciprocal beneficiary shall be distributed as follows:

(1) The intestate estate or part thereof shall be divided into as many equal shares as there are:
   (A) Surviving parents; and
   (B) Deceased parents with one or more surviving descendants, if any, as determined under subsection (e);

(2) One share shall pass to each surviving parent; provided that if the decedent is a minor, and if it is shown by clear and convincing evidence that any parent has:
   (A) Deserted the minor without affording means of identification for a period of at least ninety days;
   (B) Failed to communicate with the minor when able to do so for a period of at least one year when the minor is in the custody of another; or
   (C) Failed to provide for care and support of the minor when able to do so for a period of at least one year when the minor is in the custody of another, despite an order requiring child support,

   the parent shall be deemed to have predeceased the decedent; and

(3) The balance of the intestate estate or part thereof, if any, shall pass by representation to the surviving descendants of the decedent's deceased parents, as determined under subsection (e).

(e) When a parent survives: computation of shares of surviving descendants of a deceased parent. The following rules shall apply under subsection (d) to determine whether a deceased parent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased parents are also descendants of one or more surviving parents, those descendants shall be deemed to have predeceased the decedent; and

(2) If two or more deceased parents have the same surviving descendants and none of those deceased parents has any other surviving descendants, those deceased parents shall be deemed to be one deceased parent with surviving descendants.

(f) Surviving descendant of deceased parent. If a decedent is not survived by a descendant or parent but is survived by one or more descendants of a deceased parent, the intestate estate shall pass by representation to the surviving descendants of the decedent's deceased parents.

(g) Surviving grandparents. If a decedent is not survived by a descendant, parent, or descendant of a parent but is survived by one or more grandparents, the intestate estate shall be distributed as follows:

(1) The intestate estate shall be divided into as many equal shares as there are:
   (A) Surviving grandparents; and
   (B) Deceased grandparents with one or more surviving descendants, if any, as determined under subsection (h);

(2) One share shall pass to each surviving grandparent; and

(3) The balance of the intestate estate, if any, shall pass by representation to the surviving descendants of the decedent's deceased grandparents, as determined under subsection (h).

(h) When a grandparent survives: computation of shares of surviving descendants of a deceased grandparent. The following rules shall apply under subsection (g) to determine whether a deceased grandparent of the decedent is treated as having a surviving descendant:

(1) If all of the surviving descendants of one or more deceased grandparents are also descendants of one or more surviving grandparents, those descendants shall be deemed to have predeceased the decedent; and

(2) If two or more deceased grandparents have the same surviving descendants and none of those deceased grandparents has any other surviving descendant, those deceased grandparents shall be deemed to be one deceased grandparent with surviving descendants.

(i) Surviving descendant of deceased grandparent. If a decedent is not survived by a descendant, parent, descendant of a parent, or grandparent but is survived by one or more descendants of a grandparent, the intestate estate shall pass by representation to the surviving descendants of the decedent's deceased grandparents.

(j) Surviving descendants of deceased spouse or reciprocal beneficiary. If a decedent is not survived by a descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent but is survived by one or more descendants of a deceased spouse or reciprocal beneficiary, the intestate estate shall pass by representation to the surviving descendants of the decedent's deceased spouses or reciprocal beneficiaries."

SECTION 11. Section 560:2-104, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-104 Requirement [~~that heir survive decedent for~~] of survival by one hundred twenty hours[~~.~~]; gestational period; pregnancy after decedent's death. (a) In this section, "gestational period" means the time between the start of a pregnancy and birth.

(b) For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (c), the following rules shall apply:

(1) An individual born before a decedent's death who fails to survive the decedent by one hundred twenty hours [~~is~~] shall be deemed to have predeceased the decedent [~~for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly~~]. If it is not established by clear and convincing evidence that an individual [~~who would otherwise be an heir~~] born before a decedent's death survived the decedent by one hundred twenty hours, it [~~is~~] shall be deemed that the individual failed to survive for the required period[~~.~~];

(2) An individual in gestation at the decedent's death shall be deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived one hundred twenty hours after birth, it shall be deemed that the individual failed to survive for the required period; and

(3) If the decedent dies before the start of a pregnancy by assisted reproduction resulting in the birth of an individual who lives at least one hundred twenty hours after birth, that individual shall be deemed to

be living at the decedent's death if the decedent's personal representative, no later than six months after the decedent's death, received notice or had actual knowledge of an intent to use genetic material in the assisted reproduction and:

(A) The embryo was in utero no later than thirty-six months after the decedent's death; or

(B) The individual was born no later than forty-five months after the decedent's death.

(c) This section [~~is~~] shall not [~~to be applied~~] apply if its application would [~~result in a taking of intestate~~] cause the estate [~~by~~] to pass to the State under section 560:2-105."

SECTION 12. Section 560:2-106, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-106 Representation. (a) Definitions. In this section:

"Deceased descendant", "deceased parent", [~~or~~] "deceased grandparent", "deceased spouse", or "deceased reciprocal beneficiary" means a descendant, parent, [~~or~~] grandparent, spouse, or reciprocal beneficiary who either predeceased the decedent or is deemed to have predeceased the decedent under section 560:2-104.

"Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 560:2-104.

(b) Decedent's descendants. If, under section [~~560:2-103(1),~~] 560:2-103(c), all or part of a decedent's intestate estate [~~or a part thereof~~] passes "by representation" to the decedent's descendants, the estate or part thereof [~~is~~] shall be divided into as many equal shares as there are:

(1) Surviving descendants in the generation nearest to the decedent [~~which~~] that contains one or more surviving descendants; and

(2) Deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation [~~is~~] shall be allocated one share. The remaining shares, if any, [~~are~~] shall be combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

[~~(c) Descendants of parents or grandparents. If, under section 560:2-103(3) or (4), a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:~~

~~(1) Surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and~~

~~(2) Deceased descendants in the same generation who left surviving descendants, if any.~~

~~Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.~~]

(c) Descendants of parent when parent survives. If a decedent is survived by one or more parents and, under section 560:2-103(d) and (e), the

balance of the decedent's intestate estate or part thereof passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the balance shall pass to those descendants as if they were the decedent's surviving descendants under subsection (b).

(d) Descendants of parent when no parent survives. If a decedent is not survived by a parent and, under section 560:2-103(f), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the intestate estate shall pass to those descendants as if they were the decedent's surviving descendants under subsection (b).

(e) Descendants of grandparent when grandparent survives. If a decedent is survived by one or more grandparents and, under section 560:2-103(g) and (h), the balance of the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the balance shall pass to those descendants as if they were the decedent's surviving descendants under subsection (b).

(f) Descendants of grandparent when no grandparent survives. If a decedent is not survived by a grandparent and, under section 560:2-103(i), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the intestate estate shall pass to those descendants as if they were the decedent's surviving descendants under subsection (b).

(g) Descendants of deceased spouse or reciprocal beneficiary. If a decedent is survived by descendants of one or more deceased spouses or reciprocal beneficiaries and, under section 560:2-103(j), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased spouses or reciprocal beneficiaries, the intestate estate shall pass to those descendants as if they were the decedent's surviving descendants under subsection (b)."

SECTION 13. Section 560:2-107, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-107 [~~Kindred of half blood.~~ ~~Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.~~] **Inheritance without regard to number of common ancestors in the same generation.** An heir shall inherit without regard to how many common ancestors in the same generation the heir shares with the decedent."

SECTION 14. Section 560:2-113, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-113 Individuals related to decedent through [~~two lines.~~] more than one line. An individual who is related to the decedent through [~~two lines~~] more than one line of relationship [~~is~~] shall be entitled to only a single share based on [~~the~~] one line of relationship [~~that would entitle the individual to the larger share~~]. If the shares from the lines of relationship are unequal, the individual shall be entitled to the largest share. The individual and the individual's descendants shall be deemed to have predeceased the decedent with respect to the other line or lines of relationship."

SECTION 15. Section 560:2-114, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-114 Parent [~~and child relationship.~~ ~~(a) Except as provided in subsections (b) and (c), for purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of~~

~~their marital status. The parent and child relationship may be established under chapter 584.~~

~~(b) An adopted individual is the child of the child's adopting parent or parents and not of the child's natural parents, except that:~~

~~(1) Adoption of a child by the spouse or reciprocal beneficiary of either natural parent has no effect on:~~

~~(A) The relationship between the child and that natural parent; or~~

~~(B) The right of the child or a descendant of the child to inherit from or through the other natural parent; and~~

~~(2) Adoption of a child during such child's minority by the spouse or reciprocal beneficiary of a natural parent of the child, by a natural grandparent, aunt, uncle, or sibling of the child or the spouse or reciprocal beneficiary of a natural grandparent, aunt, uncle, or sibling of the child has no effect on the relationship between the child and either natural parent, for the limited purpose of interpretation or construction of a disposition in any will, trust, or other lifetime instrument, whether executed before or after the order of adoption, and for the purposes of determining the heirs at law of a natural family member of the child.~~

~~(c) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the natural parent's, and has not refused to support the child.~~

~~(d) For the purposes of this section, if a person has been adopted more than once, the term "natural parent" includes an adopting parent by an earlier adoption.~~] **barred from inheriting in certain circumstances.**

(a) A parent shall be barred from inheriting from or through a child of the parent if:

(1) The parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(2) The child died before reaching eighteen years of age and there is clear and convincing evidence that immediately before the child's death, the parental rights of the parent could have been terminated under the laws of this State, other than this chapter, on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section shall be treated as if the parent predeceased the child.

(c) Except as otherwise provided in section 560:2-E(b), the termination of a parent's parental rights to a child shall have no effect on the right of the child or a descendant of the child to inherit from or through the parent."

SECTION 16. Section 560:2-202, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Elective-share amount. The surviving spouse or reciprocal beneficiary of a decedent who dies domiciled in this State [~~has~~] shall have a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to [~~the value of the elective-share percentage~~] fifty per cent of the value of the marital-property portion of the augmented estate[~~, determined by the length of time the spouse and the decedent were married to each other, or the reciprocal beneficiary and the decedent were in a reciprocal beneficiary relationship, in accordance with the following schedule:~~

~~If the decedent and the spouse were married to each other, or the decedent and the reciprocal beneficiary were in a relationship:~~	~~The elective-share percentage is:~~
~~Less than 1 year~~	~~Supplemental amount only.~~
~~1 year but less than 2 years~~	~~3% of the augmented estate.~~
~~2 years but less than 3 years~~	~~6% of the augmented estate.~~
~~3 years but less than 4 years~~	~~9% of the augmented estate.~~
~~4 years but less than 5 years~~	~~12% of the augmented estate.~~
~~5 years but less than 6 years~~	~~15% of the augmented estate.~~
~~6 years but less than 7 years~~	~~18% of the augmented estate.~~
~~7 years but less than 8 years~~	~~21% of the augmented estate.~~
~~8 years but less than 9 years~~	~~24% of the augmented estate.~~
~~9 years but less than 10 years~~	~~27% of the augmented estate.~~
~~10 years but less than 11 years~~	~~30% of the augmented estate.~~
~~11 years but less than 12 years~~	~~34% of the augmented estate.~~
~~12 years but less than 13 years~~	~~38% of the augmented estate.~~
~~13 years but less than 14 years~~	~~42% of the augmented estate.~~
~~14 years but less than 15 years~~	~~46% of the augmented estate.~~
~~15 years or more~~	~~50% of the augmented estate;~~

~~provided, however, the surviving spouse or reciprocal beneficiary may elect to take a share smaller than that to which the surviving spouse or reciprocal beneficiary is entitled hereunder~~].

(b) Supplemental elective-share amount. If the sum of the amounts described in sections 560:2-207, 560:2-209(a)(1), and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under section [~~560:2-209(b) and (c)~~] 560:2-209(c) and (d) is less than [~~$50,000,~~] $90,000, the surviving spouse or reciprocal beneficiary [~~is~~] shall be entitled to a supplemental elective-share amount equal to [~~$50,000~~] $90,000 minus the sum of the amounts described in those sections. The supplemental elective-share amount [~~is~~] shall be payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in section [~~560:2-209(b) and (c).~~] 560:2-209(c) and (d)."

SECTION 17. Section 560:2-203, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-203 Composition of the augmented estate. (a) Subject to section 560:2-208, the value of the augmented estate, to the extent provided in sections 560:2-204, 560:2-205, 560:2-206, and 560:2-207, [~~consists~~] shall consist of the sum of the values of all property, whether real or personal[~~;~~], movable or immovable, tangible or intangible, wherever situated, that constitute the [~~decedent's~~]:

(1) Decedent's net probate estate[~~, the decedent's~~];
(2) Decedent's nonprobate transfers to others[~~, the decedent's~~];
(3) Decedent's nonprobate transfers to the surviving spouse or reciprocal beneficiary[~~, and the surviving~~]; and
(4) Surviving spouse's property or reciprocal beneficiary's property and nonprobate transfers to others.

(b) The value of the marital-property portion of the augmented estate shall consist of the sum of the values of the four components of the augmented estate as determined under subsection (a) multiplied by the following percentage:

Less than 1 year	3%
1 year but less than 2 years	6%
2 years but less than 3 years	12%
3 years but less than 4 years	18%
4 years but less than 5 years	24%
5 years but less than 6 years	30%
6 years but less than 7 years	36%
7 years but less than 8 years	42%
8 years but less than 9 years	54%
9 years but less than 10 years	60%
10 years but less than 11 years	68%
11 years but less than 12 years	76%
12 years but less than 13 years	84%
13 years but less than 14 years	92%
14 years but less than 15 years	96%
15 years or more	100%.”

SECTION 18. Section 560:2-205, Hawaii Revised Statutes, is amended to read as follows:

“§560:2-205 Decedent’s nonprobate transfers to others. The value of the augmented estate [~~includes~~] shall include the value of the decedent’s nonprobate transfers to others, not included under section 560:2-204, of any of the following types, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent’s death. Probate included under this category [~~consists~~] shall consist of:

(A) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included [~~is~~] shall be the value of the property subject to the power, to the extent the property passed at the decedent’s death, by exercise, release, lapse, [~~in~~] default, or otherwise, to or for the benefit of any person other than the decedent’s estate or surviving spouse or reciprocal beneficiary;

(B) The decedent’s fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included [~~is~~] shall be the value of the decedent’s fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent’s death to a surviving joint tenant other than the decedent’s surviving spouse or reciprocal beneficiary;

(C) The decedent’s ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included [~~is~~] shall be the value of the decedent’s ownership interest, to the extent the decedent’s ownership interest passed at the decedent’s death to or for the benefit of any person other than the decedent’s estate or surviving spouse or reciprocal beneficiary. As used herein, “ownership interest” is determined by dividing:

(i) [~~the~~] The sum of all the decedent’s deposits to the account, including deposit life insurance proceeds added

to the account on account of the decedent's death, less all withdrawals made by or for the benefit of the decedent[~~,~~]; by

(ii) [~~the~~] The sum of all deposits to the account; and

(D) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included [~~is~~] shall be the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse or reciprocal beneficiary;

(2) Property transferred in any of the following forms by the decedent during marriage:

(A) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included [~~is~~] shall be the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse or reciprocal beneficiary; or

(B) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over [~~property is~~]:

(i) Property shall be the value of the property subject to the power[~~,~~]; and [~~the amount included with respect to a power over income is~~]

(ii) Income shall be the value of the property that produces or produced the income,

to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or reciprocal beneficiary or to the extent the property passed at the decedent's death, by exercise, release, lapse, [~~in~~] default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse or reciprocal beneficiary. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included [~~is~~] shall be the greater amount; and

(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1)(A), (B), or (C), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death.

The amount included [~~is~~] shall be the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and [~~is~~] shall be included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse or reciprocal beneficiary, or surviving spouse or reciprocal beneficiary. As used in this subparagraph, "termination", with respect to a [~~right~~]:

(i) Right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest[~~,~~]; and[~~, with respect to a power~~]

(ii) Power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise[~~, but,~~];

provided that with respect to a power described in paragraph (1)(A), "termination" occurs when the power terminated by exercise or release, but not otherwise;

(B) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1)(D) had the transfer not occurred. The amount included [~~is~~] shall be the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse or reciprocal beneficiary; or

(C) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse or reciprocal beneficiary. The amount included [~~is~~] shall be the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded [~~$20,000.~~] $32,000."

SECTION 19. Section 560:2-209, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-209 Sources from which elective share payable. (a) Elective-share amount only. In a proceeding for an elective share, the following [~~are~~] shall be applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(1) Amounts included in the augmented estate under section 560:2-204 [~~which~~] that pass or have passed to the surviving spouse or reciprocal beneficiary by testate or intestate succession and amounts included in the augmented estate under section 560:2-206; and

(2) [~~Amounts~~] The marital-property portion of amounts included in the augmented estate under section 560:2-207 [~~up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in section 560:2-202(a) appropriate to the length of time:~~

~~(A) The spouse and the decedent were married to each other; or~~

~~(B) The reciprocal beneficiary and the decedent were in a reciprocal beneficiary relationship~~].

(b) The marital-property portion under subsection (a)(2) shall be computed by multiplying the value of the amounts included in the augmented estate under section 560:2-207 by the percentage of the augmented estate set forth in the schedule in section 560:2-203(b), appropriate to the length of the marriage or the reciprocal beneficiary relationship.

[~~(b)~~] (c) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse or reciprocal beneficiary is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate, other than assets passing to the surviving spouse or reciprocal beneficiary by testate or intestate succession, and in the decedent's nonprobate transfers to others[~~, other than amounts included~~] under section [~~560:2-205(3)(A) or (C), are~~] 560:2-205(1), (2), and (3)(B), shall be applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others [~~are so~~] shall be applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

[~~(c)~~] (d) If, after the application of subsections (a) and [~~(b),~~] (c), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others [~~is so~~] shall be applied so that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(e) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (c) or (d) shall be treated as a general pecuniary devise for purposes of section 560:3-904."

SECTION 20. Section 560:2-212, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Incapacitated surviving spouse or reciprocal beneficiary. If the election is exercised on behalf of a surviving spouse or reciprocal beneficiary who is an incapacitated person, that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under section [~~560:2-209(b) and (c) must~~] 560:2-209(c) and (d) shall be placed in a custodial trust for the benefit of the surviving spouse or reciprocal beneficiary under chapter 554B, except as modified below. For the purposes of this subsection, an election on behalf of a surviving spouse or reciprocal beneficiary by an agent under a durable power of attorney [~~is~~] shall be presumed to be on behalf of a surviving spouse or reciprocal beneficiary who is an incapacitated person. For purposes of the custodial trust established by this subsection:

(1) The electing guardian, conservator, or agent [~~is~~] shall be the custodial trustee;

(2) The surviving spouse or reciprocal beneficiary [~~is~~] shall be the beneficiary; and

(3) The custodial trust [~~is~~] shall be deemed to have been created by the decedent spouse or reciprocal beneficiary by written transfer that takes effect at the decedent spouse's or reciprocal beneficiary's death and that directs the custodial trustee to administer the custodial trust as one created for the benefit of an incapacitated beneficiary."

SECTION 21. Section 560:2-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in subsection (b), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child [~~receives~~] shall receive a share in the estate as follows:

(1) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child [~~receives~~] shall receive a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to [~~the other~~] another parent of the omitted child and that [~~other~~] parent survives the testator and is entitled to take under the will; and

(2) If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child [~~is~~] shall be entitled to share in the testator's estate as follows:

(A) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share [~~is~~] shall be limited to devises made to the testator's then-living children under the will;

(B) The omitted after-born or after-adopted child [~~is~~] shall be entitled to receive the share of the testator's estate, as limited in subparagraph (A), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;

(C) To the extent feasible, the interest granted to an omitted after-born or after-adopted child under this section [~~must~~] shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will; and

(D) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed shall abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator."

SECTION 22. Section 560:2-402, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-402 Homestead allowance. A decedent's surviving spouse or reciprocal beneficiary [~~is~~] shall be entitled to a homestead allowance of [~~$15,000.~~] $30,000. If there is no surviving spouse or reciprocal beneficiary, each minor child and each dependent child of the decedent [~~is~~] shall be entitled to a homestead allowance amounting to [~~$15,000~~] $30,000 divided by the number of minor and dependent children of the decedent. The homestead allowance [~~is~~] shall be exempt from and has priority over all claims against the estate. [~~Homestead~~] The homestead allowance [~~is~~] shall be in addition to any share passing to the surviving spouse or reciprocal beneficiary or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share."

SECTION 23. Section 560:2-403, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-403 Exempt property. In addition to the homestead allowance, the decedent's surviving spouse or reciprocal beneficiary [~~is~~] shall be entitled from the estate to a value, not exceeding [~~$10,000~~] $20,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse or reciprocal beneficiary, the decedent's children [~~are~~] shall be entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than [~~$10,000~~] $20,000 or if there is not [~~$10,000~~] $20,000 worth of exempt property in the estate, the spouse, reciprocal beneficiary, or children [~~are~~] shall be entitled to other assets of the estate, if any, to the extent necessary to make up the [~~$10,000~~] $20,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property shall have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property [~~abates~~] shall abate as necessary to permit earlier payment of homestead allowance and family allowance. These rights [~~are~~] shall be in addition to any benefit or share passing to the surviving spouse, reciprocal beneficiary, or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share."

SECTION 24. Section 560:2-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the estate is otherwise sufficient, property specifically devised [~~may~~] shall not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse or reciprocal beneficiary, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse or reciprocal beneficiary, [~~the children, or the~~] guardians of the minor children, or adult children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding [~~$18,000~~] $36,000 or periodic installments not exceeding [~~$1,500~~] $3,000 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined."

SECTION 25. Section 560:2-514, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-514 Contracts concerning succession. A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after January 1, 1997, may be established only by:

(1) Provisions of a will stating material provisions of the contract;
(2) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(3) A writing [~~signed by the decedent~~] evidencing the contract[~~.~~] and signed by the party alleged to have breached the contract.

The execution of a joint will or mutual wills [~~does~~] shall not create a presumption of a contract not to revoke the will or wills."

SECTION 26. Section 560:2-603, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Substitute gift. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following shall apply:

(1) Except as provided in paragraph (4), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift [~~is~~] shall be deemed to be created in the devisee's surviving descendants. [~~They~~] The devisee's surviving descendants shall take by representation the property to which the devisee would have been entitled had the devisee survived the testator;

(2) Except as provided in paragraph (4), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift [~~is~~] shall be deemed to be created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator [~~passes~~] shall pass to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee [~~takes~~] shall take the share to which [~~he or she~~] the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee shall take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants;

(3) For the purposes of section 560:2-601, words of survivorship, such as in a devise to an individual "if he survives me", or in a devise to "my surviving children", [~~are~~] shall not, in the absence of additional evidence, be a sufficient indication of an intent contrary to the application of this section;

(4) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph (1) or (2), the substitute gift [~~is~~] shall be superseded by the alternative devise [~~only~~] if [~~an~~]:

(A) The alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(B) The alternate devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will;

(5) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment [~~can~~] may be substituted for the appointee under this section, regardless of whether [~~or not~~] the descendant is an object of the power[~~.~~]; and

(6) In this subsection:

"Descendant of a grandparent" means an individual who qualifies as a descendent of a grandparent of the testator or of the donor of a power of appointment under the:

(A) Rules of construction applicable to a class gift; or

(B) Rules for intestate succession if the devise of exercise of the power is not in the form of a class gift.

"Surviving descendants of the deceased devisee" means the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will."

SECTION 27. Section 560:2-606, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A specific devisee [~~has~~] shall have a right to the specifically devised property in the testator's estate at death and:

(1) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;

(2) Any amount of a condemnation award for the taking of the property unpaid at death;

(3) Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; [~~and~~]

(4) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation[~~.~~];

(5) Any real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property; and

(6) If not covered by paragraphs (1) through (5), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise."

SECTION 28. Section 560:2-608, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-608 Exercise of power of appointment. In the absence of a requirement that a power of appointment be exercised by a reference[~~, or by an express~~] or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, [~~expresses~~] shall be deemed to express an intention to exercise a power of appointment held by the testator only if:

(1) The power is a general power exercisable in favor of the powerholder's estate, and the creating instrument does not contain [~~a~~] an effective gift if the power is not exercised; or

(2) The testator's will manifests an intention to include the property subject to the power."

SECTION 29. Section 560:2-704, Hawaii Revised Statutes, is amended to read as follows:

"§560:2-704 Power of appointment; meaning of specific reference requirement. [~~If~~] A powerholder's substantial compliance with a formal

requirement of appointment imposed in a governing instrument [~~creating a power of appointment expressly requires that the power be exercised~~] by [~~a~~] the donor, including a requirement that the instrument exercising the power of appointment make reference[~~, an express reference,~~] or [~~a~~] specific reference[~~,~~] to the power [~~or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.~~] shall be sufficient if:

(1) The powerholder knows of and intends to exercise the power; and

(2) The powerholder's manner of attempted exercise does not impair a material purpose of the donor in imposing the requirement."

SECTION 30. Section 560:2-706, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Substitute gift. If a beneficiary fails to survive the decedent and is a grandparent, [~~a~~] descendant of a grandparent, or [~~a~~] stepchild of the decedent, the following shall apply:

(1) Except as provided in paragraph (4), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift [~~is~~] shall be deemed to be created in the [~~beneficiary's~~] surviving descendants[~~,~~] of the deceased beneficiaries. [~~They~~] The surviving descendants of the deceased beneficiaries shall take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent;

(2) Except as provided in paragraph (4), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift [~~is~~] shall be deemed to be created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent [~~passes~~] shall pass to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary [~~takes~~] shall take the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary shall take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;

(3) For the purposes of section 560:2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me", or in a beneficiary designation to "my surviving children", [~~are~~] shall not, in the absence of additional evidence, be a sufficient indication of an intent contrary to the application of this section; [~~and~~]

(4) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2), the substitute gift [~~is~~] shall be superseded by the alternative beneficiary designation [~~only~~] if:

(A) The alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(B) The alternative beneficiary designation is not in the form of a class gift and an expressly designated beneficiary of the alternative beneficiary designation is entitled to take[~~.~~]; and

(5) As used in this subsection:

"Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the decedent under the:

(A) Rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(B) Rules for intestate succession if the beneficiary designation is not in the form of a class gift.

"Surviving descendants of the deceased beneficiaries" means the descendants of deceased beneficiaries or class member who would take under a class gift created in the beneficiary designation."

SECTION 31. Section 560:2-707, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Survivorship required; substitute gift. A future interest under the terms of a trust executed after January 1, 1997 [~~is~~], shall be contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following shall apply:

(1) Except as provided in paragraph (4), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift [~~is~~] shall be deemed to be created in the [~~beneficiary's~~] surviving descendants[~~.~~] of the deceased beneficiaries. [~~They~~] The surviving descendants of the deceased beneficiaries shall take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date;

(2) Except as provided in paragraph (4), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift [~~is~~] shall be deemed to be created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date [~~passes~~] shall pass to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary [~~takes~~] shall take the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary shall take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants;

(3) For the purposes of section 560:2-701, words of survivorship attached to a future interest [~~are~~] shall not, in the absence of additional evidence, be a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of

survivorship are expressed in condition-precedent, condition-subsequent, or any other form; and

(4) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by paragraph (1) or (2), the substitute gift [~~is~~] shall be superseded by the alternative future interest [~~only~~] if [~~an~~]:

(A) The alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or

(B) The alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

As used in this subsection, "surviving descendants of the deceased beneficiaries" means the descendants of deceased beneficiaries or class members who would take under a class gift created in the trust."

SECTION 32. Section 560:2-804, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Definitions. In this section:

"Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

"Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 560:2-802. A decree of separation that does not terminate the [~~status of husband and wife is~~] marriage shall not be a divorce for purposes of this section.

"Divorced individual" includes an individual whose marriage has been annulled.

"Governing instrument" means a governing instrument executed by:

(1) A divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse; or

(2) An individual who is a former reciprocal beneficiary before the termination of the reciprocal beneficiary relationship with the individual's former reciprocal beneficiary.

"Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by [~~blood,~~] application of the rules establishing parent-child relationships under subpart of part 1 or affinity and who, after the divorce or annulment, is not related to the divorced individual by [~~blood, adoption,~~] application of the rules establishing parent-child relationships under subpart of part 1 or affinity.

"Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which:

(1) The divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, regardless of whether [~~or not~~] the divorced individual was then empowered to designate the individual's self in place of the individual's former spouse or in place of the individual's former spouse's relative and regardless of whether [~~or not~~] the divorced individual then had the capacity to exercise the power; or

(2) An individual who is a former reciprocal beneficiary, at the time of the termination, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the

individual's former partner or former partner's relative, regardless of whether [~~or not~~] the individual was then empowered to designate the individual's self in place of the individual's former partner or in place of the individual's former partner's relative and regardless of whether [~~or not~~] the individual who is the former reciprocal beneficiary then had the capacity to exercise the power.

"Termination" means the dissolution of a reciprocal beneficiary relationship under chapter 572C between two adults."

SECTION 33. Section 560:3-108, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-108 Probate, testacy and appointment proceedings; ultimate time limit. (a) No [~~informal~~] probate [~~or appointment~~] proceeding [~~or formal testacy or~~] to establish a will and related appointment proceeding, other than [~~a~~] an ancillary proceeding [~~to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may~~], shall be commenced more than five years after the decedent's death[~~, except:~~]; provided that:

(1) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate[~~, appointment, or testacy~~] proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) Appropriate probate[~~, appointment, or testacy~~] proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) A formal probate proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment if the contest is successful, may be commenced within:
   (A) Ninety days after receiving notice of an informal proceeding pursuant to section 560:3-306;
   (B) Twelve months from the date the will was informally admitted to probate; or
   (C) Thirty days from the entry of a formal order approving the accounts and settlement of the estate by an informally appointed personal representative,

   whichever time period expires first. If an informal proceeding is closed informally, the court in its discretion may allow a will contest to proceed after the limitations period has expired if it determines that notice of the informal probate proceedings was not provided pursuant to section 560:3-306 and not more than five years has elapsed since the decedent's death;

[~~(4) An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration have occurred within the five year period after decedent's death, but the personal representative has no right to possess estate assets as provided in section 560:3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate;~~] and

[~~(5)~~] (4) A formal testacy proceeding may be commenced at any time after five years from the decedent's death if[~~, in~~]:

(A) In the discretion of the court, it would be equitable to do so[,] for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will [~~or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.~~];

(B) The terms of the decedent's will provide for a distribution to the decedent's revocable living trust;

(C) Newly discovered assets of the decedent require administration; or

(D) All interested parties who are entitled by statute to notice of the petition join in the petition.

(b) A proceeding seeking an adjudication of intestacy and related appointment proceeding may be commenced at any time unless there has been a prior probate proceeding concerning the decedent's estate. If there has been a prior probate proceeding, a formal proceeding seeking an adjudication of intestacy may be commenced only under the conditions and circumstances set forth in section 560:3-412.

[~~(b)~~] (c) These limitations [~~do~~] shall not apply to proceedings to construe probated wills or determine heirs of an intestate.

[~~(c)~~] (d) In cases under subsection (a)(1) or (2), the date on which a [~~testacy or appointment~~] probate proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter [~~which~~] that relate to the date of death."

SECTION 34. Section 560:3-203, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A person entitled to letters under subsection (a)(2) to (5) may nominate a qualified person to act as personal representative[~~,~~], who shall have the same priority as the person making the nomination. Any person aged eighteen and over may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them, or in applying for appointment."

SECTION 35. Section 560:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(A) A statement of the interest of the applicant, together with the name[~~,~~]; residence, business, or mailing address[~~,~~]; and telephone number of the applicant;

(B) The name[~~,~~] and date of death of the decedent, the decedent's age, [~~and~~] the county and state of the decedent's domicile at the time of death, and the names and addresses of the spouse or reciprocal beneficiary, children, heirs, and devisees and the

ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(C) If the decedent was not domiciled in the State at the time of the decedent's death, a statement showing venue;

(D) A statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated;

(E) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and

(F) That the time limit for informal probate [~~or appointment~~] as provided in this article has not expired either because five years or less have passed since the decedent's death, or, if more than five years from death have passed, circumstances as described by section 560:3-108 authorizing tardy probate or appointment have occurred;

(2) An application for informal probate of a will shall state the following in addition to the statements required by paragraph (1):

(A) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of [~~a~~] an original will probated, filed, deposited, or lodged in another jurisdiction accompanies the application;

(B) That the applicant, to the best of applicant's knowledge, believes the will to have been validly executed; and

(C) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument [~~which~~] that is the subject of the application is the decedent's last will;

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought;

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by paragraph (1):

(A) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 560:1-301[~~,~~] or[~~,~~] a statement why any [~~such~~] instrument of which the applicant may be aware is not being probated; and

(B) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 560:3-203;

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be

terminated if the application is granted, and describe the priority of the applicant; and

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 560:3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition [~~which~~] that led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant."

SECTION 36. Section 560:3-303, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-303 Informal probate; proof and findings required. (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) The application is complete;
(2) The applicant has made an oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;
(3) The applicant appears from the application to be an interested person as defined in section 560:1-201;
(4) On the basis of the statements in the application, venue is proper;
(5) An original, duly executed and apparently unrevoked will is in the registrar's possession;
(6) Any notice required by sections 560:3-204 and 560:3-306 has been given and that the application is not within section 560:3-304; and
(7) It appears from the application that the time limit for original probate has not expired.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another judicial circuit of this State or except as provided in subsection (d), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will [~~which~~] that appears to have the required signatures and [~~which~~] contains an attestation clause showing that requirements of execution under section 560:2-502, 560:2-503, or 560:2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, regardless of whether [~~or not~~] the person was a witness to the will.

(d) Informal probate of a will [~~which~~] that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place [~~which~~] that does not provide for probate of a will after death and [~~which~~] that is not eligible for probate under subsection (a) [~~,~~] may be probated in this State upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(f) A will that has been filed, deposited, or lodged in another jurisdiction, but not probated, may be probated in this State upon receipt by the registrar of a duly authenticated copy of the will or a copy of the will and a

statement from its legal custodian that the copy filed is a full, true, and correct copy of the original."

SECTION 37. Section 560:3-406, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-406 Formal testacy proceedings; contested cases; testimony of attesting witnesses. [~~(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the State, competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.~~

~~(b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.~~] In a contested case hearing in which the proper execution of a will is at issue, the following rules shall apply:

(1) If the will is self-proved pursuant to section 560:2-504, the will shall be deemed to satisfy the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgement and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit; and

(2) If the will is witnessed pursuant to section 560:2-502(a)(3), but not self-proved, the testimony of at least one of the attesting witnesses shall be required to establish proper execution if within this State, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses shall raise a rebuttable presumption that the events received in the clause occurred."

SECTION 38. Section 560:3-605, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-605 Demand for bond by interested person. Any person apparently having an interest in the estate worth in excess of [~~$1000,~~] $10,000, or any creditor having a claim in excess of [~~$1000,~~] $10,000, may make a written demand that a personal representative give bond. The demand shall be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, if ordered by the court, bond [~~is~~] shall be required, but the requirement [~~ceases~~] shall cease if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 560:3-603 or 560:3-604. After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice [~~is~~] shall be cause [~~of~~] for the personal representative's removal and appointment of a successor personal representative."

SECTION 39. Section 560:3-703, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-703 General duties; relation and liability to persons interested in estate; standing to sue. (a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by sections 554D-804, 554D-806, and 554D-808(c). A personal representative [~~is~~] shall be under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this chapter, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this chapter, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will [~~is~~] shall be authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, [~~is~~] shall be authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. [~~Nothing in this~~] This section [~~affects~~] shall not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants[~~,~~] whose claims have been allowed, the surviving spouse or reciprocal beneficiary, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this chapter.

(c) Except as to proceedings [~~which~~] that do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent's death [~~has~~] shall have the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as the decedent had immediately [~~prior to~~] before death.

(d) A personal representative shall not be surcharged for a distribution that does not take into consideration the possibility of posthumous pregnancy unless the personal representative, no later than six months after the decedent's death, received notice or had actual knowledge of an intent to use genetic material in assisted reproduction."

SECTION 40. Section 560:3-720, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-720 Expenses in estate litigation. If any personal representative or person nominated as personal representative, or an heir or beneficiary if a personal representative or person nominated as a personal representative refuses to act, defends or prosecutes any proceeding regarding the validity of a will in good faith, whether successful or not, that person [~~is~~] shall be entitled to receive from the estate [~~that person's necessary~~] reasonable costs, expenses, and disbursements, including reasonable attorneys' fees [~~incurred.~~], regardless of whether counsel has been retained on a contingency fee basis."

SECTION 41. Section 560:3-801, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Unless notice has already been given under this section, a person applying or petitioning for appointment of a personal representative or probate of a will or declaration of an intestacy may publish a notice to creditors once a

week for [~~three~~] two successive weeks in a newspaper of general circulation in the judicial circuit in which the application or petition is filed announcing the person's application or petition and the name and address of the person nominated as personal representative, if any, and notifying creditors of the estate to present their claims no later than four months after the date of the first publication of the notice or be forever barred. The notice may be combined with any published notice of the pendency of the probate proceedings."

SECTION 42. Section 560:3-803, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All claims against either a decedent or a decedent's estate [~~which~~] that arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or non-claim statute, [~~are~~] shall be barred against the estate, [~~the~~] personal representative, [~~the~~] decedent's trustee, and [~~the~~] heirs and devisees of the decedent, unless presented within the earlier of the following:

(1) No later than:
   (A) Four months after the date of the first publication of notice to creditors if notice is given in compliance with section 560:3-801(a); or
   (B) Sixty days after the [~~mailing or other delivery~~] service of written notice, as provided in section 560:3-801(b);

   whichever period in subparagraph (A) or (B) expires later; or
(2) Within eighteen months after the decedent's death, if notice to creditors has not been published as provided in section 560:3-801(a) or [~~delivered~~] served as provided in section 560:3-801(b)."

SECTION 43. Section 560:3-806, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As to claims presented in the manner described in section 560:3-804 within the time limit prescribed in section 560:3-803, the personal representative may [~~mail~~] serve a notice [~~to~~] upon any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative [~~may~~] shall not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim [~~which~~] that is disallowed in whole or in part by the personal representative [~~is~~] shall be barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative [~~not~~] no later than sixty days after the [~~mailing~~] service of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. If the notice does not warn the claimant of the impending sixty-day bar, then the claim shall be barred if no petition for allowance or other proceeding on the claim has been brought within eighteen months of the date of the decedent's death. Failure of the personal representative to [~~mail~~] serve notice [~~to~~] upon a claimant of action on the claimant's claim for sixty days after the time for original presentation of the claim has expired [~~has~~] shall have the effect of a notice of allowance."

SECTION 44. Section 560:3-915, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) If the heir or devisee is under disability other than minority, the personal representative [~~is~~] shall be authorized to distribute to:

(1) An attorney in fact who has authority under a power of attorney to receive property for that person; or

(2) The spouse or reciprocal beneficiary, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding [~~$10,000~~] $30,000 a year, or property not exceeding [~~$10,000~~] $30,000 in value, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for the disabled person [~~are~~] shall be obligated to apply the money or property to the support of that person, but [~~may~~] shall not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums [~~must~~] shall be preserved for future support of the disabled person. The personal representative [~~is~~] shall not be responsible for the proper application of money or property distributed pursuant to this subsection."

SECTION 45. Section 560:4-205, Hawaii Revised Statutes, is amended to read as follows:

"§560:4-205 Powers. A domiciliary foreign personal representative who has complied with section 560:4-204 may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any [~~conditions~~]:

(1) Limitations on the personal representative's powers in the domiciliary proceeding; and

(2) Conditions imposed upon nonresident parties generally."

SECTION 46. Section 560:2-108, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 560:3-916, Hawaii Revised Statutes, is repealed.

PART V

SECTION 48. In codifying the new sections added by sections 2 and 5 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 49. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 50. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.[2]

SECTION 51. This Act shall take effect upon its approval; provided that section 5 of this Act shall take effect on July 1, 2023.

(Approved June 29, 2023.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.