

Introduction

What follows this introduction is a miniature law book, nearly 200 pages long, which covers all of the laws which directly mention or refer to couples united under the reciprocal beneficiary laws of the State of Hawai‘i.

Note: this introduction simply gives some explanations which help explain the format of the laws. For an introduction, summary, and commentary on the rights and benefits recognized for couples united under these laws, see _____.

Laws which are passed by the Hawai‘i legislature are called Statutes. They were organized and put into categories many years ago. The order and categories were rearranged from time to time, and finally in the 1960s the whole bundle was rearranged again and given the name of “The Hawai‘i Revised Statutes” or HRS.

In this introduction we’ll simply refer to the Chapters and Sections of the laws by number. Lawyers would, on the other hand, refer to a Chapter or Section number by always following it with the term “HRS” to show more precisely what they were talking about (e.g., “Section 572C-1, HRS,” or “Chapter 572C, HRS”).

Not counting its index or separate annotations (commentaries), the HRS is organized into 14 volumes totaling thousands of pages. Within that mass the actual laws are categorized into 38 broad segments called “Titles.” The names or numbers of the volumes and Titles are not usually used in legal research, however, because the individual laws go by a different numbering system.

On the other hand, the volumes and Titles are sometimes useful because they give a broad outline to the organization of the HRS. For example, when the basic reciprocal beneficiary laws were passed in 1997, it was decided to place them within Title 31 (“Family”). This is a piece of evidence which helps suggest that the legislature, while not acknowledging full certified marriage rights to same-gender couples, were nevertheless acknowledging the couples’ relationships and certifying the existence of their families.

Below the level of the Titles is a separate numbering system of groups of laws called Chapters. These run from Chapter 1 (“Common Law; Construction of Laws”) through Chapter 853 (“Criminal Procedure: Deferred Acceptance of Guilty Plea, Nolo Contendere Plea”). Originally there were blanks included within this numbering system, to allow for new Chapters to be inserted. Many of these blanks still exist.

However, many new Chapters were passed over the years which fell into narrow segments of the numbering system, and a good many of these new Chapters were given intermediary numbers as they were placed between older consecutive Chapters. Hence we have the new Chapters Chapter 572C (“Reciprocal Beneficiaries”) and Chapter 572D

(“Uniform Premarital Agreement Act”), inserted between the older Chapter 572 (“Marriage”) and Chapter 573 (“Married Women”), the latter Chapter so antiquated that it has been repealed.

Chapters are the backbone of the HRS. Specialized words are rarely defined through all of the HRS or even for large areas of it. Instead, many Chapters contain their own set of definitions for terms, which differ Chapter to Chapter. Likewise, laws within a Chapter often refer to one another and must be interpreted within the context of the Chapter.

Finally, the chapter number is attached to each and every individual law within it. For example, the core laws which established reciprocal-beneficiary rights are contained in Chapter 572C. These laws, in turn, are given the numbers Section 572C-1, Section 572C-2, Section 572C-3, etc. Essentially all laws within the HRS have numbers like this, making it clear what Chapter they fall within. This helps with understanding the context of any law, and also where to find it in the law books.

In reading the individual laws given below, it is therefore important to always recognize the chapter title and subject matter that each law falls within.

Some Chapters are subdivided into Parts (Part I, Part II, etc.). This numbering system isn’t applied to the individual laws and exists just for information. In some cases, however, knowing the Part’s name can help set the context of the laws that fall within it.

As stated, each of the individual laws of the HRS are called Sections. They can run from one sentence to several pages long. They contain a descriptive title (sometimes very long) followed by text which is sometimes divided into several sub-sections that are, in turn, sometimes further subdivided.

When referring to just one sub-section, the numbers are strung together. For example, Chapter 88 (“Pension and Retirement Systems” for public employees) has one of its laws numbered as Section 88-286 (“Death Benefit”). That law is broken down to include various sub-sections, including Sub-Section 88-286(c), which deals with the deaths of employees caused by accident. That Sub-Section is further broken down, and one of its sub-sections is Sub-Section 88-286(c)(2), which deals with accident-death cases where the worker had either a surviving spouse or reciprocal beneficiary. That sub-section is again broken down, and one of its sub-sections is Sub-Section 88-286(c)(2)(A), which generally establishes a payment allowance for each dependent child, up to the age of 18.

The Sections are laid out in numerical order within each Chapter. Again, in some cases there are deliberate gaps in the numbering, but also new sections added between old sections. For example, in Chapter 334 (“Admission to Psychiatric Facility”) there is a Section numbered 334-60.4 which falls between the older Sections 334-60 and 334-61.

At the immediate end of each Section there is a coded summary within brackets which gives the history of that law. This can be ignored, of course, but it is sometimes useful in researching the law to be able to go back and see how it has evolved over the years.

For example, Chapter 79 (“Leaves of Absence” for public employees) contains Section 79-7 (“Vacation allowances on termination of employment”) to generally regulate how accumulated vacation time is taken care of when a public employee retires. At the end of the law is the historical material, edited here for brevity: “[L 1932 2d, c 4, §3; RL 1935, §106; am L 1943, c 142, §2; am L 1957, c 152, §1 and c 211, §1; HRS §79-7; gen ch 1985; am L 1997, c 169, §1 and c 383, §21]”

To translate:

* “L 1932 2d, c 4, §3” means: Originally passed in 1932 and contained in the [Legislative] Session Laws of 1932 reference book (L 1932) for the second (2d) session of that year. Specifically, it can be found as Section 3 (§3) of Act 4 (c 4) within that book. (A proposed law is called a “bill.” An approved law is called an “Act.” Acts are numbered starting with “1” for each session of the Legislature.)

* “RL 1935, §106” then means: the 1932 version of this law, without amendment, was given the number Section 106 (§106) when the laws were re-categorized in the Revised Laws of 1935 (RL 1935). This version of the law can therefore be found in the Revised Laws of 1935 reference books. (The Revised Laws of 1935 was an earlier version of the HRS. Note that the Revised Laws of 1935 did not tie each Section of the law to its Chapter number; the law was simply Section 106 of the entire set of laws without reference to any Chapter.)

* “am L 1943, c 142, §2” then means: the 1932 version of the law was amended (am) in 1943 and the amendment is contained in the [Legislative] Session Laws of 1943 reference book (L 1943). Specifically, it can be found as Section 2 (§2) of Act 142 (c 142) within that book.

* “am L 1957, c 152, §1 and c 211, §1” then means: the law was amended (am) twice further in 1957 and the amendments are contained in the [Legislative] Session Laws of 1957 reference book (L 1957). Specifically, they can be found as Section 1 (§1) of Act 152 (c 152) within that book, and also as Section 1 (§1) of Act 211 (c 211).

* “HRS §79-7” then means: the 1957 version of this law, without further amendment, was given the number Section 79-7 (§79-7) when the laws were re-categorized as the Hawai‘i Revised Statutes in the 1960s (HRS). This version can therefore be found in the HRS reference books. (This was the birth of the system of compiling the laws, called the HRS, that we still use today. Note that the same law was now assigned to Chapter 79 of that compilation of laws.)

* “gen ch 1985” then means: the law was overhauled slightly and given a gender change (gen ch) so that the previous gender-specific language in it was made gender neutral.

* “am L 1997, c 169, §1 and c 383, §21” then means: the 1985 version of the law was amended (am) twice in 1997 and the amendments are contained in the [Legislative] Session Laws of 1997 reference book (L 1997). Specifically, they can be found as Section 1 (§1) of Act 169 (c 169) within that book, and also as Section 21 (§21) of Act 383 (c 383).

Note that out of all this history, the most important for our purposes is the last item: Act 383 was the one which amended the law to include certified reciprocal beneficiary families among those eligible for benefits authorized by this law.

The HRS includes not only the laws and their histories but also has a limited number of annotations (commentaries) on the individual laws. Compiled by the legislative staff, these include occasional notes about such things as the law or how it came into being. Annotations also include some cross-references to other HRS laws or Rules of Court (the latter are unofficial laws published by the judicial branch of the State government).

The annotations (commentaries) also include references to key interpretations of the law contained in such writings as court decisions, opinions from the State’s Attorney General, or law-journal articles. The annotations included within the HRS do not include all possible references but are useful for what references are listed.

Most Sections of the HRS have no annotations; those that do have usually have just a few. Some annotations, however, can run for 10 pages. With one exception, noted in the text, all annotations are included below to give as complete a reference as possible.

The annotations use their own sets of abbreviations to refer to portions of court decisions, law-review articles, or other sources. The meaning of these abbreviations, or the meaning of terms within the annotations or within the laws, can sometimes be explained by calling the Legislative Reference Bureau Librarian through the State switchboard (586-2211).

It is extremely doubtful that any certified married couple has ever used all the laws referring to certified marriage. Likewise, it is doubtful that any certified reciprocal-beneficiary couple would ever use all the laws below. After all, the laws are quite long and often refer to rare occurrences.

Still, they are, with the exception of the upcoming Vermont reciprocal-beneficiary law, the most thorough set of rights and benefits to same-gender couples in the country, and so they are offered here as reference and with the hope of their being used to the widest

possible extent. Great sacrifice went into winning their approval, and we acknowledge those who came before and contributed to their existence.

In the laws that follow, double-brackets are used to identify information added for explanatory purposes. Single brackets, on the other hand, are all materials from the HRS and refer to such things as a section number assigned to a law by the legislative staff when a number was not specified in the legislation; words inserted in a law for clarity although not in the law as passed by the Legislature; or the historical material following a law.

In the HRS, each Section number is preceded with the symbol “§” meaning Section.

Laws occasionally refer to other Chapters or Sections of the HRS. Where these are not included below, they can be read in the HRS reference books, available at any library, or on the web at <http://www.capitol.hawaii.gov/site1/docs/docs.asp?press1=docs> (the web site contains different legislative documents; the HRS is included toward the bottom of the site).

To make reading easier, the following Sections have been slightly reformatted without changing any of their language or order.

The following list of laws attempts to include all reciprocal-beneficiary referenced materials from the HRS as of the start of 2000. Any errors or omissions, if any, are regretted; please send reports of any to _____. Likewise, information on typographical or grammatical errors would be welcome, although it is noted that the laws and annotations are taken verbatim from the State’s current web site listing of the laws.

[[Chapter 23, “Auditor”]]
[[Chapter 23, Part IV, “Social and Financial Assessment of
Proposed Mandatory Health Insurance Coverage.”]]

[[Chapter 23, referring to the Legislative Auditor, required the Auditor to examine the costs of any changes to the health-insurance coverage laws. The reciprocal-beneficiaries law (Act 383 of the 1997 Legislature), included changes to the health-insurance laws. To prevent delays or unnecessary burdens to the Auditor, Section 72 of Act 383 waived the requirement of the examination from Chapter 23.]]

[[Chapter 79, “Leaves of Absence” (for public workers)]]

§79-7

Vacation allowances on termination of employment.

An employee whose employment is voluntarily terminated without prejudice during any calendar year shall be entitled to all of the employee's accumulated vacation allowance plus the employee's current accrued vacation allowance to and including the date of termination, notwithstanding that the current accrued vacation allowance may not have been recorded at the time.

An employee whose employment is involuntarily terminated otherwise than for cause due to the employee's own misconduct shall be entitled to all of the employee's accumulated vacation allowance and current accrued vacation allowance, and the date of such termination shall be fixed so as to permit the employee to take the leave.

The date of discharge of an employee whose employment is terminated for cause due to the employee's own misconduct may, within the discretion of the department head concerned, be fixed so as to permit the allowance of all or any part of any accumulated vacation allowance and current earned vacation allowance.

If any employee dies with accumulated or current accrued vacation earned but not taken, an amount equal to the value of the employee's pay over the period of such earned vacation, and any earned and unpaid wages, shall be paid to the person or persons who may have been designated as the beneficiary or beneficiaries by the employee during the employee's lifetime in a verified written statement filed with the comptroller or other disbursing officer who issues warrants or checks to pay the employee for the employee's services as a public officer or public employee, or, failing the designation, to the employee's surviving spouse or reciprocal beneficiary, or, failing the surviving spouse or reciprocal beneficiary, to the employee's estate.

Whenever an employee's service is to be terminated, voluntarily or involuntarily, the service, at the option of the department head or other appointing power concerned, may be terminated forthwith and the retiring employee may be paid forthwith, in lieu of the employee's vacation allowance, the amount of compensation to which the employee would be entitled or which the employee would be allowed during the vacation period if the employee were permitted to take the employee's vacation in the normal manner, and in such case the employee's position may be declared vacant and may be permanently filled by a new appointee before the expiration of any vacation period following the date of the termination.

For an employee hired after June 30, 1997, whose service is to be terminated, voluntarily or involuntarily, the amount of compensation to be paid in lieu of vacation allowance under this section shall be computed using the rate of pay and amount of accumulated and accrued vacation on the date the employee is terminated. Prompt notice upon such forms and in such manner as may be required shall be given by the department head of any action taken under this provision.

[L 1932 2d, c 4, §3; RL 1935, §106; am L 1943, c 142, §2; RL 1945, §553; am L 1949, c 298, §1; am L 1955, c 71, §1; RL 1955, §5-38; am L 1957, c 152, §1 and c 211, §1; HRS §79-7; gen ch 1985; am L 1997, c 169, §1 and c 383, §21]

[[annotations:]]

Attorney General Opinions

Where increment increase falls within period of employee's vacation leave, employee is entitled to the increase whether employee takes the leave or is paid an amount in lieu of such leave. Att. Gen. Op. 64-32.

Unpaid wages and vacation pay of deceased employee were payable to designated beneficiary, even though employee acquired wife after designation of beneficiary and named wife as taker under his will. Att. Gen. Op. 69-15.

By terminating service before December 31, employee may receive payment for current accrued vacation allowance in addition to accumulated 90 day vacation credit. Att. Gen. Op. Ltr. 1/13/71.

§79-13

Funeral leave.

Three days' leave with pay, on such days as may be designated by the officer or employee, shall be granted any officer or employee in the service of the State or any county upon the death of any member of the officer's or employee's immediate family.

The term "immediate family" shall include the spouse or reciprocal beneficiary, children, parents, siblings, father-in-law, mother-in-law, grandparents, of the officer or employee, or an individual who has become a member of an immediate family through the Hawaiian "hanai" custom; provided, however, an individual affected by the "hanai" relationship shall be entitled to utilize funeral leave only for those members of the individual's immediate family resulting from the "hanai" relationship.

[L 1955, c 179, §1; RL 1955, §5-42.5; am L 1963, c 157, §1; HRS §79-13; am L 1974, c 143, §1; gen ch 1985; am L 1997, c 383, §22]

[[Chapter 83, "Temporary Intergovernmental Assignment of Public Employees"]]

§83-8

Travel and transportation expenses.

Whenever any unit of government of this State will benefit from a temporary intergovernmental assignment, it may, in accordance with applicable statutes and rules, pay for or reimburse another government for travel and transportation expenses of an employee on such an assignment, or a portion of such expenses, by agreement between the sending and the receiving agencies.

Such expenses may include a per diem allowance if the period of assignment will be for less than eight months or the costs of moving the employee's spouse or reciprocal beneficiary, and children, household goods and personal effects between agencies if the period of assignment will be for eight months or longer.

[L 1978, c 63, pt of §4; am L 1997, c 383, §23]

[[Chapter 87, "Public Employees Health Fund"]]

§87-23.5

Determination of long-term care benefits plan; contract with carrier or third-party administrator.

(a) [Subsection effective until June 30, 2000. For subsection effective July 1, 2000, see below.] The board of trustees shall determine the benefits of a long-term care benefits plan for employee-beneficiaries, their spouses or reciprocal beneficiaries, and qualified-beneficiaries. The plan shall comply with the provisions of article 10A, part V, of chapter 431, upon initial plan implementation only.

(a) [Subsection effective July 1, 2000. For subsection effective until June 30, 2000, see above.] The board shall determine the benefits of a long-term care benefits plan for employee-beneficiaries, their spouses or reciprocal beneficiaries, as well as their parents and grandparents, and in-law parents and grandparents, and qualified-beneficiaries. The plan shall comply with article 10H, of chapter 431.

(b) [Subsection effective until June 30, 2000. For subsection effective July 1, 2000, see below.] Notwithstanding any other law to the contrary, such benefits shall be available only to employee-beneficiaries, their spouses or reciprocal beneficiaries, and qualified-beneficiaries who enroll between the ages of twenty and eighty-five. Eligible persons must comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(b) [Subsection effective July 1, 2000. For subsection effective until June 30, 2000, see above.] Notwithstanding any other law to the contrary, the benefits shall be available only to employee-beneficiaries, their spouses or reciprocal beneficiaries, as well as their parents and grandparents, and in-law parents and grandparents, and qualified-beneficiaries who enroll between the ages of twenty and eighty-five. Eligible persons must comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) The board may contract with a carrier to provide fully-insured benefits or a third-party administrator to administer self-insured benefits.

[L 1991, c 331, pt of §1; am L 1997, c 383, §24; am L 1999, c 93, §4]

[§87-25.5]

Reciprocal beneficiary family coverage defined; reciprocal beneficiary employees, State and counties, and fund responsibility costs.

(a) The board of trustees shall establish a reciprocal beneficiary family coverage health benefits plan for an employee who is a reciprocal beneficiary under chapter 572C and elects to enroll in reciprocal beneficiary family coverage.

(b) As used in this section, reciprocal beneficiary family coverage means coverage under a health benefits plan that insures, originally or upon subsequent amendment, an employee who is a reciprocal beneficiary, the other party to the employee's reciprocal

beneficiary relationship, and any dependent-beneficiary of the employee, any unmarried child of the non-employee reciprocal beneficiary under age nineteen, or a surviving beneficiary of the employee.

(c) This section shall be repealed on June 30, 1999.

[L 1997, c 383, §2]

[[This benefit was included in the original reciprocal-beneficiaries law and is included here for reference only as it expired on 6/30/99 as stated in the law.]]

[[Chapter 88, "Pension and Retirement Systems" (for public workers)]]

[[Part I, General Provisions]]

[[Sub-Part A, Miscellaneous]]

§88-1

Restrictions.

The provisions of this section shall be applicable to every pension and to every recipient or beneficiary thereof, granted or provided for by any special act of the legislature (other than benefits, or the recipients thereof, payable to beneficiaries or retirants of the employees' retirement system under part II) whether the pension be payable by the State or by any county, or by any board, commission, bureau, department, or other agency thereof:

- (1) No recipient or beneficiary shall be permitted to draw any pension, or any portion thereof, in excess of \$50 per month, while the recipient or beneficiary is holding any salaried position or office in, under or by authority of the United States, the State, or any political subdivision thereof. This paragraph shall not apply to any recipient or beneficiary who is elected to the legislature or to the council of any county.
- (2) If the recipient or beneficiary is a surviving spouse or reciprocal beneficiary, the pension so granted shall cease when the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship.
- (3) Any pension payable to any minor shall cease when the minor reaches the age of eighteen years.
- (4) If any recipient or beneficiary of a pension, having a spouse or reciprocal beneficiary at the time the pension was first granted to the recipient or

beneficiary dies, then the spouse or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains unmarried or not in a reciprocal beneficiary relationship, shall be paid sixty per cent of the amount of the pension payable to the beneficiary.

[L 1933, c 157, §1; RL 1935, §7915; am L 1943, c 44, §1; RL 1945, §631; am L 1947, c 28, §1; RL 1955, §6-1; HRS §88-1; am L 1969, c 110, pt of §1; am L 1974, c 118, §1(1); gen ch 1985; am L 1997, c 383, §25]

§88-4

Medical aid, etc., when free.

Every recipient of any retirement allowance or pension payable by the State or by any county or by any other governmental body or agency created by or under the laws of the State who is actually and solely dependent upon the recipient's retirement allowance or pension for the recipient's maintenance and support or whose total income in whatever form or from whatever source received, including but not limited to, the recipient's retirement allowance or pension and any income of the recipient's spouse or reciprocal beneficiary is less than \$2,400 a year shall, for the recipient and the recipient's spouse or reciprocal beneficiary, be entitled to free medical treatment from any government physician employed by the State or any county and to free hospitalization at any state hospital or at a hospital where county patients are treated at county expense in the county wherein the recipient resides.

Whenever a retirant or pensioner having a spouse or reciprocal beneficiary dies, then the spouse or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains unmarried and does not enter into a reciprocal beneficiary relationship, shall be eligible for benefits under this section.

[L 1937, c 90, §1; RL 1945, §634; RL 1955, §6-4; am L 1964, c 64, §2; am L 1965, c 260, §1; HRS §88-4; am L 1969, c 110, pt of §1; gen ch 1985; am L 1997, c 383, §26]

§88-5

List of pensioners, who shall provide.

The proper department of each county shall determine who is entitled to benefits under section 88-4 and shall provide to any government physician employed by the State or any county, and any county hospital or a hospital where county patients are treated at county expense in the county wherein the pensioner or beneficiary resides, a current list of pensioners and their [spouses] or reciprocal beneficiaries who are entitled to benefits under section 88-4.

Upon request, the state retirement system shall provide to the proper departments of each county such information as may be required to administer section 88-4.

[L 1965, c 260, §2; Supp, §6-4.1; HRS §88-5; am L 1969, c 110, pt of §1; am L 1997, c 383, §27]

[[Chapter 88, "Pension and Retirement Systems" (continued)]]
[[Part II, "Retirement for Public Officers and Employees"]]
[[Sub-Part C, "Benefits"]]

§88-84

Ordinary death benefit.

(a) Upon receipt of proper proof of a member's death occurring in service or while on authorized leave without pay, there shall be paid to the member's designated beneficiary an ordinary death benefit consisting of:

- (1) The member's accumulated contributions and, if no pension is payable under section 88-85, an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member's death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation; provided that if the member had at least one year of credited service, the amount, together with the member's accumulated contributions shall not be less than one hundred per cent of the compensation; or
- (2) If the member had ten or more years of credited service at the time of death in service, and the death occurred after June 30, 1988, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired the day prior to death under option 3 of section 88-83 and computed on the basis of section 88-76; or
- (3) If the member was eligible for service retirement at the time of death in service, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83.

(b) If the member's designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:

- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a)(1), (2), or (3);
- (2) To the deceased member's dependent child, or children under age eighteen if there is no surviving spouse or reciprocal beneficiary, an equally divided benefit as specified under subsection (a)(1); or
- (3) To the deceased member's estate, if there is no surviving spouse or reciprocal beneficiary or dependent child or children, a benefit as specified under subsection (a)(1).

(c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

[L 1925, c 55, §6(8); RL 1935, pt of §7925; RL 1945, §708, subs 8; am L 1949, c 200, §1; am L 1951, c 127, §1; RL 1955, §6-51; am L 1963, c 127, §12; am L 1967, c 247, §1; HRS §88-77; am L 1969, c 110, pt of §1; gen ch 1985; am L 1987, c 299, §2; am L 1988, c 41, §3 and c 242, §1; am L 1993, c 67, §1; am L 1994, c 108, §3; am L 1997, c 212, §4 and c 383, §28]

[[annotations:]]

Attorney General Opinions

Because of operation of renunciation of succession pursuant to Uniform Probate Code, beneficiary, deceased parent, was deemed to have predeceased member; thus, only remaining beneficiary was remaining parent, and employees' retirement system may pay member's benefits to sole remaining beneficiary. Att. Gen. Op. 97-3.

§88-85

Accidental death benefit.

Upon the receipt of proper proofs of a member's death by the board of trustees, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and if, upon the receipt of evidence or proofs that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member, there shall be paid in lieu of the ordinary death

benefits provided by the contributions of the State or county, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship; or
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains such age; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

[L 1925, c 55, §6(9); am L 1927, c 251, §§1, 4, 5; RL 1935, pt of §7925; RL 1945, §708, subs 9; RL 1955, §6-52; HRS §88-78; am L 1969, c 110, pt of §1; am L 1974, c 118, §1(2) and c 182, §4; am L 1977, c 44, §1 and c 191, §2; gen ch 1985; am L 1997, c 383, §29]

[[annotations:]]

Attorney General Opinions

Heart attack could constitute "accident" within meaning of section. Att. Gen. Op. 69-25.

Death resulting from operation on knee injured in actual performance of duty was natural and proximate result of injury and compensable. Att. Gen. Op. 71-6.

Police officer injured in automobile accident while driving home from work in police officer's own, but government equipped car, is injured while in the actual performance of duty. Att. Gen. Op. 71-6.

Hanai children are not included within meaning of "child" or "children" as used in section. Att. Gen. Op. 93-1.

§88-93

Named beneficiaries by active members; effect of marriage, entry into reciprocal beneficiary relationship, divorce, termination of reciprocal beneficiary relationship, or death.

All nominations by written designation of beneficiaries shall become null and void when:

- (1) The beneficiary predeceases the member;
- (2) The member is divorced from the beneficiary;
- (3) The member is unmarried, and subsequently marries; or
- (4) The member enters into or terminates a reciprocal beneficiary relationship.

Any of the above events shall operate as a complete revocation of such designation and all benefits payable by reason of the death of the member shall be payable to the member's legal representatives unless, after the death, divorce or marriage, or entry into or termination of reciprocal beneficiary relationship, the member makes other provision in a written designation duly executed and filed with the board of trustees.

[L 1951, c 156, §1; am L 1955, c 12, §1; RL 1955, §6-54; HRS §88-84; am L 1969, c 110, pt of §1; gen ch 1985; am L 1997, c 383, §30]

[[annotations:]]

Attorney General Opinions

Because of operation of renunciation of succession pursuant to Uniform Probate Code, beneficiary, deceased parent, was deemed to have predeceased member; thus, only

remaining beneficiary was remaining parent, and employees' retirement system may pay member's benefits to sole remaining beneficiary. Att. Gen. Op. 97-3.

Case Notes

Provision revoking a designation by subsequent marriage operated to revoke a designation made prior to enactment of provision; not unconstitutional. 42 H. 532.

Divorce decree may order party to maintain his former wife and children as beneficiaries, and upon failure of party to comply, court will determine rights of parties as if obligation had been performed. 52 H. 357, 477 P.2d 620.

[[Chapter 88, "Pension and Retirement Systems" (continued)]]
[[Part III, "Police Officers, Firefighters, and Bandsmen Pension System"]]

§88-163

Death benefits: funeral expenses; payments to dependents.

(a) Upon the death of any member of the police force, fire department, or band, as a result of any injury received or disease contracted while in the performance of his duty, or when entitled to a pension under this part or who has been pensioned under this part there shall be paid, for funeral expenses, a sum not to exceed \$100. Should the deceased member leave a dependent widow or reciprocal beneficiary and a child or children under the age of eighteen years, then there shall be paid out of the system \$50 per month to the widow until her death or remarriage or to the reciprocal beneficiary until death, marriage, or entry into a new reciprocal beneficiary relationship and \$7.50 per month to the widow or reciprocal beneficiary for each child so long as the child shall reside with the widow or reciprocal beneficiary or is supported by the widow or reciprocal beneficiary. Upon the death of such widow or reciprocal beneficiary, or in the event the deceased member leaves no widow or reciprocal beneficiary but a child or children under the age of eighteen years, then there shall be paid out of the system \$50 per month to the child or children of the deceased member under the age of eighteen years with each child, if there be more than one, receiving an equal share of the \$50 per month payment plus \$7.50 per month. All payments to a child of a deceased member provided for herein shall cease when he or she arrives at the age of eighteen years.

(b) If any member of the police force, fire department or band, dies not leaving a widow or reciprocal beneficiary, but leaving a father or mother dependent upon him, the father or mother (but not both) shall, upon satisfactory proof of dependency being made to the board of trustees receive from the system a sum not exceeding \$50 per month. The board shall determine whether the father or mother is dependent and how much of the amount herein provided for shall be paid to him or her. If there be no widow or reciprocal beneficiary and no child and no father or mother, but dependent brothers or sisters, then such pension shall be paid to them in such sums as shall not exceed the aggregate amount of

\$30 per month. All pensions authorized as provided in this subsection shall be subject to reduction by the board of trustees whenever, in its judgment, circumstances make it reasonable, fair, or necessary. All pensions so reduced may thereafter be restored or further reduced as the board may deem best.

(c) On the remarriage of any widow or reciprocal beneficiary entitled to the benefits of any sum, or in the event of any father or mother, brothers or sisters ceasing to be dependents then the payments to them shall cease.

[L 1917, c 220, pt of §3; am L 1923, c 99, §1 and pt of §2; RL 1925, pt of §2163; am L 1929, c 9, pt of §1; am L 1931, c 144, §1; RL 1935, pt of §7905; am L 1939, c 86, §2; RL 1945, pt of §6173; RL 1955, §6-143; am L 1963, c 65, §2b, j; am L 1967, c 141, §1; HRS §88-163; am L 1997, c 383, §31]

[[annotations:]]

Case Notes

Pensioner may bring claim for arrears in pension. 34 H. 150.

The claim does not survive death of pensioner. 34 H. 667.

[[Chapter 88, "Pension and Retirement Systems" (continued)]]
[[Part IV, "Municipal and County Pension Systems"]]

§88-189

Widow's, widower's, and reciprocal beneficiary's pensions.

The widow and widower or reciprocal beneficiary of any deceased man or woman, who have been previously granted or are found subsequent to his or her death to have been entitled to a pension under this part, or to have had ten or more years of service although he or she had not reached the age of sixty years, shall be eligible for a pension equal to the same amount, including all the bonuses provided in section 88-11, and all other benefits, that the said deceased was receiving or entitled to receive at the time of his or her death, and all future benefits deriving thereto, so long as the widow, widower, or reciprocal beneficiary remains unmarried or has not entered into a new reciprocal beneficiary relationship.

[L 1937, c 237, §2; am L 1939, c 112, pt of §1; am L 1941, c 302, pt of §1; RL 1945, pt of §6185; am L 1949, c 156, §1; RL 1955, §6-168; HRS §88-189; am L 1974, c 118, §1(3); am L 1997, c 383, §32]

[[Chapter 88, "Pension and Retirement Systems" (continued)]]
[[Part VII, "Retirement for Class C Public Officers and Employees"]]
[[Sub-Part D, "Eligibility; Benefits"]]

§88-286

Death benefit.

(a) The surviving spouse or reciprocal beneficiary and dependent child or children of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either an ordinary death while in service or on authorized leave without pay after accumulating ten years of credited service or an accidental death.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to one-half of the member's accrued normal retirement allowance unreduced for age, payable until remarriage, marriage, or entry into a new reciprocal beneficiary relationship[,] as if the member had retired the day prior to death; and for each dependent child an allowance equal to ten per cent of the member's accrued normal retirement allowance unreduced for age, payable until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; or
- (2) For the surviving spouse [or reciprocal beneficiary], if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option B of section 88-283; and
- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child shall receive an allowance equal to twenty per cent of the member's accrued normal retirement allowance unreduced for age, payable until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age. For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee

was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(c) In the case of accidental death, the death benefit shall be as follows:

- (1) For the surviving spouse, or reciprocal beneficiary, an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage;
- (2) If there is a surviving spouse or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
 - (A) Ten per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; or
 - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation. The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and
- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
 - (A) Twenty per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age; or
 - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen.

[L 1984, c 108, pt of §8; am L 1993, c 22, §1 as superseded by c 67, §3; am L 1994, c 108, §4; am L 1997, c 212, §7 and c 383, §33]

[[annotations:]]

Note

Section is a blend of L 1997, cc 212 and 383.

Attorney General Opinions

Hanai children are not included within meaning of "child" or "children" as used in section.

Att. Gen. Op. 93-1.

[[Chapter 105, "Government Motor Vehicles"]]

§105-2

Exceptions.

Section 105-1 shall not apply to:

- (1) The governor;
- (2) The mayor of any county;
- (3) Any member of a police department or a fire department or of the staff of a hospital, or any officer or employee of the board of water supply of the city and county of Honolulu, when using a motor vehicle for a personal purpose incidental to the person's service or work (but not for pleasure);
- (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State;
- (5) Any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the mayor, to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county;
- (6) Any officer or employee of the State, or of any county, who, in case of emergency, because of the person's illness, or the person's incapacity caused by accident while at work, or because of the illness of a member of the person's immediate family including a reciprocal beneficiary while the

person is at work, is conveyed in a motor vehicle to the person's place of abode, or to a hospital or other place, but every such use of such a motor vehicle shall be certified to by the officer or by the head of the department, commission, board, bureau, agency, or instrumentality controlling or possessing the motor vehicle immediately thereafter, and the certificate shall be forthwith filed with the comptroller, in the case of the State, or with the budget director, in the case of a county; and

- (7) The assigned driver of a Van Go Hawaii vehicle or any other state ridesharing program vehicle.

[L 1919, c 227, pt of §1; RL 1945, pt of §462; am L 1949, c 389, pt of §1(a); RL 1955, §7-11; am L 1965, c 11, §1; HRS §105-2; am L 1981, c 49, §1; gen ch 1993; am L 1997, c 383, §34]

[[annotations:]]

Attorney General Opinions

Narcotics enforcement division investigators have authority for personal use of state vehicles incident to law enforcement purposes where prior written permission has been obtained from governor upon written recommendation of comptroller. Att. Gen. Op. 91-03.

[[Chapter 171, "Public Lands, Management and Disposal of"]]

§171-74

Qualifications of lessees.

To qualify for a residential lease under this part, the lessee shall:

- (1) Be of legal age and have at least one person, related to the lessee by blood or marriage and solely dependent upon the lessee for support, who will occupy the premises with the lessee; provided that this requirement shall not apply to a husband and wife or to reciprocal beneficiaries who are joint lessees, even if both are employed;
- (2) Be a citizen and a resident of the State for not less than five years immediately preceding the issuance of the lease;
- (3) Have a gross income not in excess of \$20,000 a year, including the gross income of the lessee's spouse or reciprocal beneficiary. In determining gross income, the standard income tax exemption for each of the lessee's

dependents, as determined by the income tax laws of the State, shall be allowed; and

- (4) Have such other qualifications as may be established by the board of land and natural resources.

Any person who, after taking a residential lease, through change or circumstances, loses the qualifications initially required of the person or becomes disqualified to take a residential lease, shall not thereby be required to surrender the person's residential lease, but shall be entitled to continue to hold the same.

[L 1962, c 32, pt of §2; Supp, §103A-70; HRS §171-74; am L 1970, c 184, §5; gen ch 1985; am L 1997, c 383, §35]

§171-99

Continuation of rights under existing homestead leases, certificates of occupation, right of purchase leases and cash freehold agreements.

(a) Issuance of land patents to occupier or lessee of homestead lands. A fee simple patent shall be issued to every existing occupier under a certificate of occupation issued heretofore, and to every lessee under a nine hundred and ninety-nine year homestead lease issued heretofore, of public lands, where the lands have been improved under the certificate or lease, or have been used as a place of residence by the occupier or lessee for an aggregate continuous period of not less than ten years upon payment to the board of land and natural resources of a fair market price, disregarding the value of the improvements made by the occupier or lessee, which price shall be determined by appraisal as provided for in this chapter; provided that the board may exclude from such patents areas required as roadways to other lots.

(b) Issuance of patent, lessee of right of purchase lease. The lessee of any existing right of purchase lease shall, at such time and under such conditions as are contained in the lease, be entitled to a land patent from the board conveying to the lessee a fee simple title to the land described in the lessee's lease upon the payment of the fair market price of the land as determined by appraisal as provided for in this chapter, provided the lessee has reduced to cultivation twenty-five per cent of the premises and has resided thereon not less than two years and has substantially performed all other conditions of the lessee's lease.

(c) Cash freeholds, agreement, patent, conditions. At the end of three years from the date of the payment of the first installment, the holder of a freehold agreement is entitled to a land patent for the premises described therein, if the following conditions, in addition to those set forth herein, have been substantially performed:

- (1) Payment of the balance of the purchase price in equal installments, in one, two, and three years respectively, from the date of the freehold agreement with interest annually at the rate of four per cent; provided that the freeholder may pay the installment before it is due, and thereby stop the corresponding interest;
- (2) Cultivation of not less than twenty-five per cent of the area of the premises, and the planting and care of not less than an average of ten timber, shade or fruit trees per acre, if agricultural land, at any one time before the end of the third year, or fencing in the same if pastoral land within such time; provided that if the premises are classed as pastoral-agricultural land, the foregoing alternative conditions shall apply respectively to the two kinds of land;
- (3) Maintenance by the freeholder of the freeholder's home on the premises from the end of the first to the end of the third year;
- (4) Conditions for the prevention of waste, the planting of trees or the protection of trees growing or to be planted on the premises, or for the destruction of vegetable pests that may be on such premises or the prevention of the future introduction of such pests thereon;
- (5) Payment of all taxes that may be due on account of the premises. The holder of a freehold agreement shall allow the land agents to enter and examine the premises at all reasonable times to see that the conditions are being performed. The holder shall not assign or sublet, conditionally or otherwise, the holder's interest or any part thereof, under the freehold agreement, without the written consent of the board indorsed on the agreement; and provided further that freeholders having the whole interest in a freehold agreement may at any time when all the conditions thereof to be performed by the freeholder up to such time shall have been substantially performed, surrender to the government the interest by delivery of the freehold agreement to the land agent with the intention to surrender the same clearly indorsed thereon, and signed by them and duly attested. The surrender shall release the freeholders from all further duty or performance of the conditions of the instrument surrendered. But no such surrender shall be permitted if any freeholders are under the age of eighteen years unless the minors are represented by statutory guardians; and provided further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board may in its discretion and within the limit of its authority open the premises or any part thereof for disposition in the manner or for such uses as provided in this chapter. Before the disposition the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of such funds.

(e) Interests, descent; certificate of occupation or homestead lease. In case of the death of any occupier or lessee under an existing certificate of occupation or existing homestead lease, all the interest of the occupier or lessee, any conveyance, devise, or bequest to the contrary notwithstanding, in land held by the decedent by virtue of such certificate of occupation or homestead lease shall vest in the relations of the decedent as follows:

- (1) In the widow, widower, or reciprocal beneficiary;
- (2) If there is no widow, widower, or reciprocal beneficiary, then in the children;
- (3) If there are no children, then in the widows, widowers, or reciprocal beneficiaries of the children;
- (4) If there are no such widows, widowers, or reciprocal beneficiaries, then in the grandchildren;
- (5) If there are no grandchildren, then in the parents or surviving parent;
- (6) If there are no parents or surviving parent, then in the sisters and brothers;
- (7) If there are no sisters and brothers, then in the widowers, widows, or reciprocal beneficiaries of the sisters and brothers;
- (8) If there are no such widowers, widows, or reciprocal beneficiaries, then in the nieces and nephews;
- (9) If there are no nieces or nephews, then in the widowers, widows, or reciprocal beneficiaries of the nieces and nephews;
- (10) If there are no such widowers, widows, or reciprocal beneficiaries, then in the grandchildren of the sisters and brothers;

(11) If there are no grandchildren of any sister or brother, then in the State.

All the successors, except the State, shall be subject to the performance of the unperformed conditions of the certificate of occupation, or the homestead lease, in like manner as the decedent would have been subject to the performance if the decedent had continued alive; provided that if a widow, widower, or reciprocal beneficiary, in whom the interest shall have vested, shall thereafter marry again and decease leaving a widower, widow, or reciprocal beneficiary and a child or children of the first marriage surviving, the interest of the deceased shall vest in such child or children; and provided further that in case two or more persons succeed together to the interest of any occupier or lessee, according to the foregoing provisions, they shall hold the same by joint tenancy so long as two or more shall survive, but upon the death of the last survivor, the estate shall descend as provided above.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of occupation, or homestead lease by inheritance or otherwise, any one or more of such persons less than the whole number may file in the office of the land agent an offer to the remainder of the persons to buy their interest in the premises or to sell them their own interest therein at a stated price according to the proportion of the respective interest in question, and may deposit with the land agent the amount of the offered price in money, with a fee of \$10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with the land agent their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to such persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of such persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee. If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case the fact of the transfer shall be recorded and indorsed as above provided. In the event that any funds held by the land agent hereunder may not be paid to the persons to whom properly payable, because of the inability of the land agent to locate such persons, the funds shall, after the expiration of one year, be deposited in the department of budget and finance of the State and there abide the claim of any person

thereto lawfully entitled; provided that no claim to the funds shall be allowed unless the claim is made within five years after the deposit. Payment of any claim duly filed may be made if the department of budget and finance and the board concur in finding the claim valid and proper, but if the claimant fails to obtain concurrency of the department of budget and finance and the board within sixty days of the filing of the claimant's claim, the claimant may present a petition to the circuit court of the first judicial circuit in that behalf, notice whereof shall be given to the attorney general, who may appear and defend on behalf of the State, and if the court renders a judgment in favor of the claimant, the department of budget and finance shall pay the amount due without interest. But if the persons to whom the offer is made shall, within sixty days from the time of the notification, make answer to the land agent that they will buy the interest of the offering parties and shall deposit within sixty days with the land agent the amount required for the purpose according to the terms of the offer, the land agent shall indorse and record the fact of the sale as above provided, and pay to the offering parties the amount according to their individual interest; and the interest of the offering parties shall thereupon vest in the answering parties. In such case the consideration money deposited by the offering parties shall be returned to them.

(g) Forfeiture; existing certificate of occupation or homestead lease. The violation of any of the conditions of any existing certificate of occupation or homestead lease shall be sufficient cause for the board upon failure of the occupier or lessee within a reasonable period of time to remedy the default after notice thereof in the manner provided in section 171-20 to take possession of the demised premises without demand or previous entry, with or without legal process, and thereby, subject to section 171-21, terminate the estate created.

(h) Forfeiture; cash freeholds. In the case of default in the payment of any of the installments due on any cash freehold agreement for thirty days after the same are due, or failure of performance of any other conditions, the board may take possession of the premises, upon failure of the freeholder within a reasonable period of time to remedy the default after notice thereof in the manner provided in section 171-20 without demand or previous entry, with or without legal process, and thereby subject to section 171-21, terminate the estate created.

[L 1962, c 32, pt of §2; am L 1963, c 114, §1; Supp, §103A-93; HRS §171-99; am L 1980, c 17, §1; am L 1981, c 15, §1; gen ch 1985; am L 1997, c 383, §36]

[[annotations:]]

Case Notes

Fee simple interest may be purchased under subsection (a) by payment of "fair market price", which, under this section and §171-79, requires appraisers to ignore both the value of improvements erected on the premises and the lease encumbrances. 85 H. 217, 941 P.2d 300.

[[Chapter 209, “Disaster Relief and Rehabilitation”]]
[[Part III, “Commercial and Personal Loans”]]

§209-28

Purpose of loans.

(a) Commercial loans may be made for the following purposes: to purchase inventory, equipment, and machinery; to construct, repair, or restore buildings; to provide operating funds; and to refinance outstanding business loans on equipment and buildings; provided that the loans shall be used to rehabilitate the business of the disaster victim as nearly as possible to its predisaster level; and provided further that the loans shall not be used to begin a business substantially different from the one the disaster victim was engaged in before the state disaster. Business concerns which were nonowners of buildings before the state disaster shall not be precluded from obtaining building loans under this part.

(b) Personal loans may be made for the purpose of meeting necessary expenses or to satisfy serious needs of individuals and families including reciprocal beneficiaries which arose as an immediate and direct result of a disaster.

[L 1961, c 189, §14; Supp, §98P-14; HRS §209-28; am L 1976, c 205, §1(2); am L 1997, c 383, §37]

§209-29

Eligibility for loans.

Loans may be made to individuals, partnerships, corporations, cooperatives, or other business associations, but only if the applicant:

- (1) Suffered loss of or damage to property in a rehabilitation area as a result of a state disaster;
- (2) For a commercial loan, had operated an industrial, manufacturing, processing, wholesaling, or retailing business, or professional or service business, or building rental business, immediately before the disaster;
- (3) Presents a suitable program for:

- (A) Rehabilitation or re-establishment of the applicant's business to its predisaster level when applying for a commercial loan; or
 - (B) Meeting necessary expenses and satisfying the serious needs of the applicant and the applicant's family including reciprocal beneficiary when applying for a personal loan;
- (4) Has reasonable ability to repay the loan; and
 - (5) For a commercial loan, presents written evidence that the Small Business Administration had declined an application for financial assistance under the Small Business Administration Disaster Loan Program or has reduced the amount of the loan request; provided that the declination was not due to the applicant's having sufficient financial resources to rehabilitate the applicant; or
 - (6) For a commercial loan, cannot secure any loans from the Small Business Administration Disaster Loan Program because the making of the loans is not covered by the program, and the director of business, economic development, and tourism is reasonably satisfied that the applicant is not able to secure loans from private lending institutions and does not have sufficient financial resources to rehabilitate the applicant.

Paragraph (6) shall be applied in the alternative with respect to paragraph (5) of this section.

[L 1961, c 189, §15; Supp, §98P-15; HRS §209-29; am L 1976, c 205, §1(2); gen ch 1985; am L 1987, c 336, §7; am L 1990, c 293, §8; am L 1997, c 383, §38]

[[Chapter 247, "Conveyance Tax"]]

§247-3 Exemptions.

The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;

- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;

- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 415, 415A, 415B, 421, 421C, or 428 to the surviving or new entity; and
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership.

[L 1966, c 10, pt of §1; HRS §247-3; am L 1968, c 5, §§4 to 8; am L 1993, c 195, §3; am L 1997, c 383, §39; am L 1999, c 295, §1]

[[Chapter 306, "University Projects"]]

§306-1

Definitions.

Whenever used in this chapter:

"Board" or "board of regents" means the board of regents of the University of Hawaii, which, for the purposes of this chapter, is declared to be a political corporation within the meaning of that term as used in section 562(d) of title 48 of the United States Code.

"Construction" includes acquisition, purchase, construction, reconstruction, remodeling, renovation, improvement, betterment, and extension;

"construct" includes acquire, purchase, construct, reconstruct, remodel, renovate, improve, better and extend.

"Cost of construction" includes all costs and estimated costs of the preparation and issuance of revenue bonds and the obtaining of a loan, and all costs and estimated costs of construction of a university project, and without limiting the foregoing, includes

engineering, architectural, supervisory, inspectional, fiscal, and legal expenses; interest which it is estimated will accrue during the construction period and for six months thereafter on money obtained by loan or through the issuance of revenue bonds, or both; amounts necessary to establish or increase reserves; costs of utilities, equipment, fixtures and apparatus necessary or convenient for the use and occupancy of the university project and, if so determined by the board, the initial furnishings of the university project.

"Cost of maintenance" includes all costs and estimated costs of the maintenance of a university project or university system, and without limiting the foregoing, includes all salaries, wages, and fees of officers, employees, and contractors of the board engaged in the maintenance of a university project or university system, the cost of all supplies and equipment, and all operational and administrative expenses.

"Maintenance" includes repairs, upkeep, replacement, renewals, maintenance, operation and administration; "maintain" includes repair, keep up, replace, renew, maintain, operate and administer.

"Reserves" means reserves required or permitted in the covenants in the resolution or resolutions of the board authorizing the obtaining of loans or issuance of revenue bonds under this chapter.

"Revenue bonds" mean revenue bonds, interim certificates, notes, debentures, or other evidence of indebtedness of the board authorized by or issued under this chapter.

"Revenue of the university" means all revenues of whatever nature received by the university, or which it is entitled to receive, other than

- (1) general appropriations,
- (2) taxes,
- (3) tuition fees, and
- (4) gifts the terms of which preclude their being used for payment of the cost of construction, cost of maintenance, or both, of a university project or university system.

"Revenue of the university project or university system" means all revenues derived from the rentals, fees and charges imposed for the use or enjoyment of or the services furnished by a particular university project or university system, as the case may be.

"University" means and includes the University of Hawaii, each community college established and governed by the board pursuant to chapter 305, and any and every other educational institution now or hereafter under the control of or governed by the board.

"University athletic unit" means athletic facilities of every nature devoted either exclusively to use by the university, including its students, faculties, guests, employees, and their families including reciprocal beneficiaries, or both to university and non-university uses, for the enjoyment or utilization of, or for the privilege of observance of athletic contests or exhibitions conducted in or by means of, which facilities a fee is imposed or a charge made. A university athletic unit includes, but is not limited to, gymnasium, field house, stadium, playing field, baseball diamond, courts suitable for tennis, volleyball, and basketball, swimming and diving pools.

"University dining unit" means a structure or facility suitable for the feeding and boarding of students enrolled in the university, members of the faculties of the university, guests, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and services of which a fee is imposed or charge made. A university dining unit may be a separate structure or structures or included in another university project.

"University health unit" means a facility for the treatment, diagnosing or prevention of illness of students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and services of which a fee is imposed or charge made. A university health center includes, but is not limited to, health centers, infirmaries and clinics, and may be a separate structure or structures or included in another university project.

"University housing unit" means a structure or structures suitable for the housing of and use and occupancy as a dwelling by students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university at the invitation or request of the board, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and occupancy of which a fee or rent is charged. A university housing unit includes, but is not limited to, dormitories, apartments, and other multiple unit buildings, houses and other single unit buildings.

"University parking unit" means a facility for the parking or storage, or both, of vehicles owned or used by students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university, employees of the university, and members of the families including reciprocal beneficiaries of any such person, for the use, services or occupancy of which a fee is imposed or charge made. A university parking unit includes, but is not limited to, parking spaces on streets, alleys, drives and other roadways under the jurisdiction of the board, paved or unpaved surface areas or lots, and subsurface, surface or above surface structure or structures, and may be a separate structure or structures or included in another university project.

"University project" means a university athletic unit, university dining unit, university health unit, university housing unit, university parking unit, university student center, and any other undertaking or improvement capable of producing a revenue constructed, maintained, or both, by the board, as furtherance of the purposes of the university, and for the use and services of which fees are imposed or charges made. A university project shall include, but not be limited to, all land, fixtures, appurtenances, improvements, utilities, equipment, and furnishings necessary or convenient for the use and occupancy of a university project for the purposes for which it was constructed or is used. A university project shall be a public improvement or public undertaking within the meaning of section 562(d) of title 48 of the United States Code.

"University student center" means a structure or structures suitable for student activities or endeavors, such as, but not limited to, meetings, organizations, publications, and recreation, for the use and services of which a fee is imposed or a charge made. A university student center includes, but is not limited to, student unions, bookstores and snack bars, and may be a separate structure or structures or included in another university project.

"University system" means two or more university projects operated and maintained jointly as a system. A university system may include various university projects on any one or more of the areas under the jurisdiction of the board and may include university projects of any one or more of the educational institutions under the control of or governed by the board, including the University of Hawaii.

[L 1947, c 141, pt of §1; RL 1955, §44-60; HRS §306-1; am L 1971, c 141, §1(a); am L 1997, c 383, §40]

[[Chapter 323, "Hospitals and Medical Facilities"]]

[§323-2]

Hospital visitation policy and extension of authority to reciprocal beneficiaries.

A reciprocal beneficiary, as defined in chapter 572C, of a patient shall have the same rights as a spouse with respect to visitation and making health care decisions for the patient.

[L 1997, c 383, §3]

[[Chapter 324, "Medical Research; Morbidity and Mortality Information"]]

§324-22

Identity of persons studied and material, restrictions.

(a) The material collected under this part shall be used or published only for the purpose of advancing medical research, medical education, or education of the public in the interest of reducing morbidity or mortality; provided that the Hawaii Tumor Registry may reveal all relevant information to a patient's attending physician.

(b) The identity, or any group of facts which tends to lead to the identity, of any person whose condition or treatment has been studied shall be confidential and shall not be revealed in any report or any other matter prepared, released, or published. Researchers may, however, use the names of persons when requesting additional information for research studies approved by the cancer commission; provided that when a request for additional information is to be made directly from a patient, the researcher shall first obtain approval for such request from the patient's attending physician.

(c) The use of such additional information obtained by researchers shall also be governed by subsection (a) and in addition, where the patient is still living and the information is to be obtained directly from the patient, the researcher shall first obtain the approval of the patient, the patient's immediate family including a reciprocal beneficiary, or attending physician, in that order of priority.

[L 1973, c 25, pt of §1; gen ch 1985; am L 1997, c 383, §41]

[[Chapter 327, "Medical and Research Use of Bodies"]]

§327-3

Making, revoking, and objecting to anatomical gifts, by others.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

- (1) The spouse or reciprocal beneficiary of the decedent;
- (2) An adult son or daughter of the decedent;
- (3) Either parent of the decedent;
- (4) An adult brother or sister of the decedent;

- (5) A grandparent of the decedent; and
- (6) A guardian of the person of the decedent at the time of death.

(b) An anatomical gift may not be made by a person listed in subsection (a) if:

- (1) A person in a prior class is available at the time of death to make an anatomical gift;
- (2) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
- (3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under subsection (a) shall be made by:

- (1) A document of gift signed by the person; or
- (2) The person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subsection (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under subsection (a) is not an objection to the making of an anatomical gift.

[L 1988, c 267, pt of §1; am L 1997, c 383, §42]

§327-5

REPEALED.

L 1999, c 88, §4(2).

[[This law originally dealt with the contacting of the family to see if they would donate the deceased's body or organs. It looked towards Section 327-3, earlier, for a listing of order of family members who had authority to donate. In 1997 this Section was formally

amended so that “family” explicitly included the deceased’s reciprocal beneficiary. In 1999 the Legislature extensively overhauled the whole business concerning donated organs. Part of the overhaul was the repeal of this law and its replacement with the following law which again refers to family, but evidently inadvertently left off an explicit inclusion of the reciprocal beneficiary. This does not mean that reciprocal beneficiaries are now not recognized. That is because this new law again is dependent upon Section 327-3, earlier, for a listing of order of family members who have authority to donate, and reciprocal beneficiaries are at the top of that list.]]

[§327-5.5]

Required referral.

(a) On or before the occurrence of each death in an acute care hospital, the hospital shall report to the local organ procurement organization to determine the suitability of the individual for organ, tissue, and eye donation. This contact shall be noted on the patient's medical record.

(b) Each acute care hospital shall develop no later than July 1, 2000, with the concurrence of the hospital medical staff, a protocol for identifying potential organ and tissue donors. The protocol shall require that at or near the time of every individual death, the acute care hospital shall contact by telephone the local organ procurement organization to determine suitability for organ, tissue, and eye donation of the individual. Each hospital shall designate a person to contact the local organ procurement organization to provide the appropriate data about the individual necessary to begin assessment for suitability for recovery of anatomical gifts. The acute care hospital's protocol shall specify the kind of information that shall be available prior to making the contact, including the patient's age and cause of death. The local organ procurement organization, in consultation with the patient's attending physician or designee, shall determine the suitability for donation. If the local organ procurement organization in consultation with the patient's attending physician or designee determines that donation is not appropriate based on established medical criteria, this shall be noted by the hospital personnel on the patient's record, and no further action shall be necessary. If the local organ procurement organization in consultation with the patient's attending physician or designee determines that the patient is a suitable candidate for anatomical donation, the acute care hospital and the local organ procurement organization, separately or together, shall initiate a request by a designated requester, who shall be a person trained by the local organ procurement organization. The protocol shall encourage discretion and sensitivity to family circumstances in all discussions regarding donations of tissue or organs. The protocol shall take into account the deceased individual's religious beliefs or nonsuitability for organ and tissue donation.

(c) The local organ procurement organization shall conduct annual death record reviews at each acute care hospital to determine compliance with required referral. There

shall be no cost assessed against a hospital for a review of death records pursuant to this subsection.

(d) As used in this section:

"Acute care hospital" means a hospital, as defined in section 327-1, other than a nursing facility or other long-term care facility.

"Designated requester" means a person who has completed a course offered by an organ procurement organization on how to approach families and request organ or tissue donation.

"Organ procurement organization" shall have the same meaning as procurement organization in section 327-1.

[L 1999, c 88, pt of §3]

[[annotations:]]

Note

Hawaii organ and tissue education special fund (effective July 1, 2000 and repealed June 30, 2003). L 1999, c 88, pt of §3.

[[Chapter 327E, "Uniform Health-Care Decisions Act (Modified)"]]

[[Note: this Section was not included in the original 1997 package of laws establishing reciprocal beneficiaries. Instead, it was a new law added to the HRS in 1999.]]

[§327E-2]

Definitions.

Whenever used in this chapter, unless the context otherwise requires:

"Advance health-care directive" means an individual instruction or a power of attorney for health care.

"Agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

"Best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment and shall include:

- (1) The effect of the treatment on the physical, emotional, and cognitive functions of the patient;
- (2) The degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;
- (3) The degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;
- (4) The effect of the treatment on the life expectancy of the patient;
- (5) The prognosis of the patient for recovery, with and without the treatment;
- (6) The risks, side effects, and benefits of the treatment or the withholding of treatment; and
- (7) The religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist the surrogate decision-maker in determining benefits and burdens.

"Capacity" means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

"Emancipated minor" means a person under eighteen years of age who is totally self-supporting.

"Guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition, including:

- (1) Selection and discharge of health-care providers and institutions;
- (2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (3) Direction to provide, withhold, or withdraw artificial nutrition and hydration; provided that withholding or withdrawing artificial nutrition

or hydration is in accord with generally accepted health care standards applicable to health-care providers or institutions.

"Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care.

"Health-care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

"Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

"Individual instruction" means an individual's direction concerning a health-care decision for the individual.

"Interested persons" means the patient's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or any adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

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

"Physician" means an individual authorized to practice medicine or osteopathy under chapter 453 or 460.

"Power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power.

"Primary physician" means a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

"Reasonably available" means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a patient's health care needs, and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

“Supervising health-care provider” means the primary physician or the physician's designee, or the health-care provider or the provider's designee who has undertaken primary responsibility for an individual's health care.

“Surrogate” means an individual, other than a patient's agent or guardian, authorized under this chapter to make a health-care decision for the patient.

[L 1999, c 169, pt of §1]

[[Chapter 334, “Mental Health, Mental Illness, Drug Addiction, and Alcoholism”]]
[[Part I, “General and Administrative Procedures”]]

§334-6

Fees; payment of expenses for treatment services.

(a) Pursuant to chapter 91, the director shall establish reasonable charges for treatment services and may make collections on such charges. In making the collections on such charges the director shall take into consideration the financial circumstances of the patient and the patient's family including a reciprocal beneficiary, and no collections shall be made where in the judgment of the director, such collections would tend to make the patient or the patient's family including a reciprocal beneficiary, a public charge or deprive the patient and the patient's family including a reciprocal beneficiary, of necessary support.

(b) Every person hospitalized at a psychiatric facility or receiving treatment services through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State, or pursuant to contract with the director under section 334-2.5, shall be liable for the expenses attending their reception, maintenance, and treatment and any property not exempt from execution belonging to the person shall be subject to sequestration for the payment of the expenses. Every parent or legal guardian of a patient who is a minor and every spouse or reciprocal beneficiary of a patient shall be liable for the expenses attending the reception, maintenance, and treatment of that minor child or spouse or reciprocal beneficiary who is hospitalized at a psychiatric facility or receiving treatment through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its

revenues from the general fund of the State, or pursuant to contract with the director under section 334-2.5.

[L 1967, c 259, pt of §1; HRS §334-6; am L 1971, c 153, §1; am L 1972, c 80, §1; am L 1991, c 243, §2; gen ch 1992; am L 1997, c 383, §44; am L 1999, c 119, §5]

[[Chapter 334, “Mental Health, Mental Illness,
Drug Addiction, and Alcoholism” (continued)]]
[[Part IV, “Admission to Psychiatric Facility”]]

§334-59

Emergency examination and hospitalization.

(a) Initiation of proceedings. An emergency admission may be initiated as follows:

- (1) If a police officer has reason to believe that a person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the officer shall call for assistance from the mental health emergency workers designated by the director. Upon determination by the mental health emergency workers that the person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the person shall be transported by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A police officer may also take into custody and transport to any facility designated by the director any person threatening or attempting suicide. The officer shall make application for the examination, observation, and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to a physician or psychologist at the facility.
- (2) Upon written or oral application of any licensed physician, psychologist, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of employment, a judge may issue an ex parte order orally, but shall reduce the order to writing by the close of the next court day following the application, stating that there is probable cause to believe the person is mentally ill or suffering from substance abuse, is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, and in need of care or treatment, or both, giving the findings on which the conclusion is based, and directing that a police

officer or other suitable individual take the person into custody and deliver the person to the nearest facility designated by the director for emergency examination and treatment. The ex parte order shall be made a part of the patient's clinical record. If the application is oral, the person making the application shall reduce the application to writing and shall submit the same by noon of the next court day to the judge who issued the oral ex parte order. The written application shall be executed subject to the penalties of perjury but need not be sworn to before a notary public.

- (3) Any licensed physician or psychologist who has examined a person and has reason to believe the person is:
- (A) Mentally ill or suffering from substance abuse;
 - (B) Imminently dangerous to self or others, or is gravely disabled, or is obviously ill; and
 - (C) In need of care or treatment;

may direct transportation, by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A licensed physician may administer such treatment as is medically necessary, for the person's safe transportation. A licensed psychologist may administer such treatment as is psychologically necessary.

(b) Emergency examination. A patient who is delivered for emergency examination and treatment to a facility designated by the director shall be examined by a licensed physician without unnecessary delay, and may be given such treatment as is indicated by good medical practice. A psychiatrist or psychologist may further examine the patient to diagnose the presence or absence of a mental disorder, assess the risk that the patient may be dangerous to self or others, or is gravely disabled, or is obviously ill, and assess whether or not the patient needs to be hospitalized.

(c) Release from emergency examination. If the physician who performs the emergency examination, in consultation with a psychologist if applicable, concludes that the patient need not be hospitalized, the patient shall be discharged immediately unless the patient is under criminal charges, in which case the patient shall be returned to the custody of a law enforcement officer.

(d) Emergency hospitalization. If the physician or the psychologist who performs the emergency examination has reason to believe that the patient is:

- (1) Mentally ill or suffering from substance abuse;
- (2) Imminently dangerous to self or others, or is gravely disabled, or is obviously ill; and
- (3) In need of care or treatment, or both; the physician or the psychologist may direct that the patient be hospitalized on an emergency basis or cause the patient to be transferred to another psychiatric facility for emergency hospitalization, or both.

The patient shall have the right immediately upon admission to telephone the patient's guardian or a family member including a reciprocal beneficiary, or an adult friend and an attorney. If the patient declines to exercise that right, the staff of the facility shall inform the adult patient of the right to waive notification to the family including a reciprocal beneficiary, and shall make reasonable efforts to ensure that the patient's guardian or family including a reciprocal beneficiary, is notified of the emergency admission but the patient's family including a reciprocal beneficiary, need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with an attorney in private.

(e) Release from emergency hospitalization. If at any time during the period of emergency hospitalization the responsible physician concludes that the patient no longer meets the criteria for emergency hospitalization the physician shall discharge the patient. If the patient is under criminal charges, the patient shall be returned to the custody of a law enforcement officer. In any event, the patient must be released within forty-eight hours of the patient's admission, unless the patient voluntarily agrees to further hospitalization, or a proceeding for court-ordered evaluation or hospitalization, or both, is initiated as provided in section 334-60.3. If that time expires on a Saturday, Sunday, or holiday, the time for initiation is extended to the close of the next court day. Upon initiation of the proceedings the facility shall be authorized to detain the patient until further order of the court.

[L 1976, c 130, pt of §4; am L 1977, c 76, pt of §3; am L 1984, c 188, §1; am L 1985, c 68, §6; am L 1986, c 335, §§2, 3; am L 1992, c 138, §1; gen ch 1993; am L 1994, c 58, §1; am L 1997, c 383, §45]

[[annotations:]]
Case Notes

Several provisions of section held to violate FOURTEENTH Amendment due process rights. 438 F. Supp. 1106.

§334-60.4

Notice; waiver of notice; hearing on petition; waiver of hearing on petition for involuntary hospitalization.

(a) The court shall set a hearing on the petition and notice of the time and place of such hearing shall be served in accordance with, and to those persons specified in, a current order of commitment. If there is no current order of commitment, notice of the hearing shall be served personally on the subject of the petition and served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, on the subject's spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse or reciprocal beneficiary, legal parent and adult children, or if none can be found, notice of the hearing shall be served on at least one of the subject's closest adult relatives if any can be found. Notice of the hearing shall also be served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as the case may be. If the subject of the petition is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if such person can be found within the State. Notice shall also be given to such other persons as the court may designate.

(b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the subject; and a statement of the legal standard upon which commitment is authorized;
- (2) A copy of the petition;
- (3) A written notice, in plain and simple language, that the subject may waive such a hearing by voluntarily agreeing to hospitalization, or with the approval of the court, to some other form of treatment;
- (4) A filled-out form indicating such waiver;
- (5) A written notice, in plain and simple language, that the subject or the subject's guardian or representative may apply at any time for a hearing on the issue of the subject's need for hospitalization, if the subject has previously waived such a hearing;
- (6) Notice that the subject is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
- (7) Notice that if the subject does not want to be represented by the public defender the subject may contact the subject's own attorney;

- (8) Notice, if such be the case, that the petitioner intends to adduce evidence to show that the subject of the petition is an incapacitated or protected person, or both, under Article V of chapter 560, and whether or not appointment of a guardian of the person is sought at the hearing. If appointment of a guardian of the person is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.

(c) If the subject executes and files a waiver of the hearing, upon acceptance by the court following a court determination that the person understands the person's rights and is competent to waive them, the court shall order the subject to be committed to a facility that has agreed to admit the subject as an involuntary patient or, if the subject is at such a facility, that the subject be retained there.

[L 1984, c 188, pt of §3; gen ch 1985; am L 1997, c 383, §46]

§334-60.5

Hearing on petition.

(a) The court may adjourn or continue a hearing for failure to timely notify a spouse or reciprocal beneficiary, guardian, relative, or other person determined by the court to be entitled to notice, or for failure by the subject to contact an attorney as provided in section 334-60.4(b)(7) if the court determines the interests of justice so require.

(b) The time and form of the procedure incident to hearing the issues in the petition shall be provided by court rule. Unless the hearing is waived, the judge shall hear the petition as soon as possible and no later than ten days after the date the petition is filed unless a reasonable delay is sought for good cause shown by the subject of the petition, the subject's attorney, or those persons entitled to receive notice of the hearing under section 334-60.4.

(c) The subject of the petition shall be present at all hearings unless the subject waives the right to be present, is unable to attend, or creates conditions which make it impossible to conduct the hearing in a reasonable manner as determined by the judge. A waiver is valid only upon acceptance by the court following a judicial determination that the subject understands the subject's rights and is competent to waive them, or is unable to participate. If the subject is unable to participate, the judge shall appoint a guardian ad litem or a temporary guardian as provided in Article V of chapter 560, to represent the subject throughout the proceedings.

(d) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested person, or the court on its own motion may request a hearing in

another circuit because of convenience to the parties, witnesses, or the court or because of the individual's mental or physical condition.

(e) The attorney general, the attorney general's deputy, special deputy, or appointee shall present the case for hearings convened under this chapter, except that the attorney general, the attorney general's deputy, special deputy, or appointee need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the court the case for involuntary hospitalization.

(f) Counsel for the subject of the petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that the counsel believes necessary to a proper disposition of the proceedings, including evidence as to alternatives to inpatient hospitalization.

(g) No individual may be found to require treatment in a psychiatric facility unless at least one physician or psychologist who has personally examined the individual testifies in person at the hearing. This testimony may be waived by the subject of the petition. If the subject of the petition has refused to be examined by a licensed physician or psychologist, the subject may be examined by a court-appointed licensed physician or psychologist. If the subject refuses and there is sufficient evidence to believe that the allegations of the petition are true, the court may make a temporary order committing the subject to a psychiatric facility for a period of not more than five days for the purpose of a diagnostic examination and evaluation. The subject's refusal shall be treated as a denial that the subject is mentally ill or suffering from substance abuse. Nothing in this section, however, shall limit the individual's privilege against self-incrimination.

(h) The subject of the petition in a hearing under this section has the right to secure an independent medical or psychological evaluation and present evidence thereon.

(i) If after hearing all relevant evidence, including the result of any diagnostic examination ordered by the court, the court finds that an individual is not a person requiring medical, psychiatric, psychological, or other rehabilitative treatment or supervision, the court shall order that the individual be discharged if the individual has been hospitalized prior to the hearing. If the court finds that the criteria for involuntary hospitalization under section 334-60.2(1) has been met beyond a reasonable doubt and that the criteria under sections 334-60.2(2) and 334-60.2(3) have been met by clear and convincing evidence, the court may issue an order to any police officer to deliver the subject to a facility that has agreed to admit the subject as an involuntary patient, or if the subject is already a patient in a psychiatric facility, authorize the facility to retain the patient for treatment for a period of ninety days unless sooner discharged. An order of commitment shall specify which of those persons served with notice pursuant to section 334-60.4, together with such other persons

as the court may designate, shall be entitled to receive any subsequent notice of intent to discharge, transfer, or recommit.

(j) The court may find that the subject of the petition is an incapacitated or protected person, or both, under Article V of chapter 560, and may appoint a guardian of the person, or property, or both, for the subject under the terms and conditions as the court shall determine.

[L 1984, c 188, pt of §3; am L 1985, c 220, §1; gen ch 1985; am L 1994, c 58, §3; am L 1997, c 383, §47]

[[Chapter 334, “Mental Health, Mental Illness,
Drug Addiction, and Alcoholism” (continued)]]
[[Part VIII, “Involuntary Outpatient Treatment”]]

§334-125
Notice.

(a) Notice of the hearing shall be:

- (1) Served personally on the subject of the petition pursuant to family court rules; and
- (2) Delivered personally or mailed by certified or registered mail, return receipt requested, deliverable to addressee only, to as many as are known to the petitioner of the subject's spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed.

Petitioner shall certify that such notices have been mailed, and to whom, but proof of receipt of such notices is not required. Notice shall also be served on any other person that the court designates.

(b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the hearing and possible consequences to the subject, and a statement of the legal standard upon which involuntary outpatient treatment is authorized;
- (2) A copy of the petition; and

- (3) Notice that the subject of the petition is entitled to be represented by an attorney, and that the court will appoint a public defender or other attorney for the subject if the subject desires one and is indigent.

(c) The family court may continue a hearing for failure to timely notify a person entitled to be notified.

[L 1984, c 251, pt of §1; am L 1997, c 383, §48]

[[annotations:]]
Rules of Court

Service of process, see HFCR rule 4.

[[Chapter 338, “Vital Statistics”]]

[[No part of this Chapter directly mentions reciprocal beneficiaries, nor was the Chapter mentioned in the group of laws passed in 1997 establishing reciprocal-beneficiary rights and benefits. The Chapter deals with the keeping of certain statistics and records including such things as records of divorce. The annotation to the cover page of the Chapter says the following:]]

[[annotations:]]
Cross References

Reciprocal beneficiaries, see chapter 572C.

[[Chapter 351, “Crime Victim Compensation”]]
[[Part I, “Introductory”]]

§351-2
Definitions.

As used in this chapter, unless the context otherwise requires:

"Child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child;

"Commission" means the crime victim compensation commission established by this chapter;

"Crime" means those under section 351-32, and shall include an act of terrorism occurring outside the United States as defined in Title 18 United States Code section 2331, against a resident of this State;

"Dependents" mean such relatives of a deceased victim who were wholly or partially dependent upon the victim's income at the time of the victim's death or would have been so dependent but for the incapacity due to the injury from which the death resulted and includes the child of the victim born after the victim's death;

"Designated person" means a person who made payments for funeral, burial, and medical expenses on behalf of a victim;

"Injury" means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and "injured" has a corresponding meaning;

"Private citizen" means any natural person other than a police officer who is actively engaged in the performance of the police officer's official duties;

"Relative" means a victim's spouse or reciprocal beneficiary, parent, grandparent, stepparent, child, grandchild, stepchild, brother, sister, half brother, half sister, stepbrother, stepsister, or spouse's or reciprocal beneficiary's parents;

"Resident" means every individual who:

- (1) Intends to permanently reside in this State;
- (2) Has a permanent abode in this State;
- (3) Is a student at any institution of learning and claimed as a dependent of a Hawaii resident;
- (4) Files a Hawaii income tax return; or
- (5) Is registered to vote in this State;

"Victim" means:

- (1) A person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State;

- (2) Any resident of the State who is injured or killed in another state by an act or omission of another person, which act or omission is within the description of any of the crimes specified in section 351-32; or
- (3) A person who is a resident of this State who is injured or killed by an act of terrorism occurring outside the United States, as defined in Title 18 United States Code section 2331.

[L 1967, c 226, pt of §1; HRS §351-2; am L 1972, c 2, §13 and c 61, §1a; am L 1977, c 191, §2; am L 1983, c 124, §15; gen ch 1985; am L 1989, c 177, §§1 to 3; am L 1995, c 182, §1; am L 1997, c 383, §49; am L 1998, c 239, §1 and c 240, §3]

[[Chapter 352, “Hawaii Youth Correctional Facilities”]]

§352-13

Evaluation, counseling, training.

The director shall provide the opportunity for intelligence and aptitude evaluation, psychological testing and counseling, prevocational and vocational training, and employment counseling to all persons committed to the youth correctional facilities. Counseling services shall be available for the committed person's family including a reciprocal beneficiary, during the term of commitment.

[L 1980, c 303, pt of §8(1); am L 1997, c 383, §50]

[[Chapter 353, “Corrections”]]

[[Part I, “Administrative Structure, Institutions, and Services”]]

§353-17

Committed persons, furlough, employment.

(a) The director or a designated agent may grant furloughs to committed persons with a minimum or lower security classification in any correctional facility of the department for the purpose of employment, social reorientation, education, or training, or any other valid purpose as determined by the director. Special out-of-state furloughs may be granted to those already otherwise furloughed, at no cost to the State, when death or critical illness or injury to the committed person's immediate family including a reciprocal beneficiary, occurs. Any committed person who is engaged in private employment, by contract or otherwise, not under the immediate custody of the State shall not be considered

an agent or employee of the State. Any moneys earned from employment by such person shall be used to satisfy a restitution order and to reimburse the State for the cost of room and board. If any earned moneys remain after these expenses have been paid, that amount shall be held in an individual account for the committed person. When an inmate is granted a special out-of-state furlough, the director shall inform the authorities of the state to which the inmate is to be furloughed of the inmate's arrival.

(b) Full power to enforce the terms and conditions of furlough and to retake and reincarcerate a furloughed committed person is conferred upon the director or designated agent. The director or a designated agent, at any time, may issue a warrant authorizing the arrest and return to actual custody of any furloughed committed person for the purpose of ascertaining whether or not the terms and conditions of furlough have been violated so as to justify revoking the furlough and to retake and reincarcerate the furloughed committed person. The administrators of all of the correctional facilities of the State, the chief of police of each county, all police officers of the State, and all correctional facility officials shall execute any such warrant of arrest in like manner as an ordinary criminal process.

(c) Any furloughed committed person retaken and reincarcerated as provided in this chapter shall be confined according to the committed person's sentence for that portion of the committed person's term remaining unserved at the time of furlough, but subsequent furloughs, in the discretion of the director or designated agent, may be granted to a committed person during the life and in respect of sentence.

[L 1987, c 338, pt of §3; am L 1997, c 383, §51]

[[Chapter 386, “Workers’ Compensation Law”]]
[[Part II, “Compensation”]]
[[Sub-Part B, “Income and Indemnity Benefits”]]
[[Sub-Part 1, “Disability”]]

§386-34

Payment after death.

Where an employee is entitled to weekly income and indemnity benefits for permanent total or permanent partial disability and dies from any cause other than the compensable work injury, payment of any unpaid balance of the benefits to the extent that the employer is liable therefor, but not to exceed the amount prescribed under section 386-32(a) for other cases, shall be made to the employee's dependents as provided herein.

If, at the time of the death, the employee is entitled to any benefits from the special compensation fund, the benefits shall also be paid to the employee's dependents as provided herein:

- (1) To a dependent widow, widower, or reciprocal beneficiary, for the use of the widow, widower, or reciprocal beneficiary, and the dependent children, if any. The director of labor and industrial relations may from time to time apportion such compensation among the widow, widower, or reciprocal beneficiary, and any dependent children.
- (2) If there be no dependent widow, widower, or reciprocal beneficiary, but one or more dependent children, then to such child or children to be divided equally among them if more than one.
- (3) If there be no dependent widow, widower, reciprocal beneficiary, or child, but there be a dependent parent, then to such parent, or if both parents be dependent, to both of them, to be divided equally between them; or if there be no such parents, but a dependent grandparent, then to such grandparent, or if more than one, then to all of them to be divided equally among them.
- (4) If there be no dependent widow, widower, reciprocal beneficiary, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, then to such dependent, or if more than one, then to all of them to be divided equally among them.
- (5) If there be no such dependents, the unpaid balance of the compensation shall be paid in a lump sum into the special compensation fund.

[L 1963, c 116, pt of §1; Supp, §97-33; HRS §386-34; am L 1969, c 85, §1; am L 1972, c 42, §3; am L 1973, c 47, §2; gen ch 1985; am L 1997, c 383, §52]

[[annotations:]]

Attorney General Opinions

Cited in discussion of hanai children. Att. Gen. Op. 93-1.

[[Chapter 386, “Workers’ Compensation Law” (continued)]]
[[Part II, “Compensation” (continued)]]
[[Sub-Part B, “Income and Indemnity Benefits” (continued)]]
[[Sub-Part 2, “Death”]]

Entitlement to and rate of compensation.

(a) Funeral and burial allowance. Where a work injury causes death, the employer shall pay funeral expenses not to exceed ten times the maximum weekly benefit rate to the mortician and burial expenses not to exceed five times the maximum weekly benefit rate to the cemetery selected by the family including a reciprocal beneficiary or next of kin of the deceased or in the absence of such family including a reciprocal beneficiary or next of kin, by the employer. Such payments shall be made directly to the mortician and cemetery; provided that when the deceased has a pre-paid funeral and burial plan such payments for funeral and burial expenses, not to exceed the foregoing limits, shall be made directly to the surviving spouse or reciprocal beneficiary or the decedent's estate if there is no surviving spouse or reciprocal beneficiary.

(b) Weekly benefits for dependents. In addition, the employer shall pay weekly benefits to the deceased's dependents at the percentages of the deceased's average weekly wages specified below, taking into account not more than the maximum weekly benefit rate prescribed in section 386-31 divided by .6667 and not less than the minimum prescribed in the section divided by .6667. To the dependent widow, widower, or reciprocal beneficiary, if there are no dependent children, fifty per cent. To the dependent widow, widower, or reciprocal beneficiary, if there are one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow, widower, or reciprocal beneficiary shall be for the use and benefit of the widow, widower, or reciprocal beneficiary and of the dependent children, and the director of labor and industrial relations from time to time may apportion the compensation between them in such way as the director deems best. If there is no dependent widow, widower, or reciprocal beneficiary, but a dependent child, then to the child forty per cent, and if there is more than one dependent child, then to the children in equal parts sixty-six and two-thirds per cent. If there is no dependent widow, widower, or reciprocal beneficiary, or child, but there is a dependent parent, then to the parent, if wholly dependent fifty per cent, or if partially dependent twenty-five per cent; if both parents are dependent, then one-half of the foregoing compensation to each of them; if there is no dependent parent, but one or more dependent grandparents, then to each of them the same compensation as to a parent. If there is no dependent widow, widower, or reciprocal beneficiary, child, parent or grandparent, but there is a dependent grandchild, brother, or sister, or two or more of them, then to those dependents thirty-five per cent for one dependent, increased by fifteen per cent for each additional dependent, to be divided equally among the dependents if more than one.

(c) Maximum weekly amounts. The sum of all weekly benefits payable to the dependents of the deceased employee shall not exceed sixty-six and two-thirds per cent of the employee's average weekly wages, computed by observing the limits specified in subsection (b), if necessary, the individual benefits shall be proportionally reduced.

(d) Liability in the absence of dependents. If there be no dependents who are entitled to benefits under this section, the employer shall pay an amount equal to twenty-five per cent of three hundred and twelve times the effective maximum weekly benefit rate provided in section 386-31, to the nondependent parent or parents. If there be no such parent or parents, the employer shall pay the sum into the special compensation fund, pursuant to an order made by the director. The employer, pursuant to an order made by the director, shall pay any remaining balance into the special compensation fund, if the weekly benefits to which dependents are entitled terminate without totalling the amounts as calculated above.

[L 1963, c 116, pt of §1; am L 1965, c 152, §1(b); Supp, §97-40; HRS §386-41; am L 1971, c 24, §1 and c 101, §1; am L 1972, c 42, §4; am L 1973, c 64, §1; am L 1974, c 153, §4; am L 1977, c 87, §1; am L 1982, c 52, §1; gen ch 1985; am L 1991, c 72, §1 and c 98, §1; am L 1997, c 383, §53]

[[annotations:]]

Attorney General Opinions

Cited in discussion of hanai children. Att. Gen. Op. 93-1.

Case Notes

Cited: 43 H. 173, 175.

§386-42

Dependents.

(a) The following persons, and no others, shall be deemed dependents and entitled to income, and indemnity benefits under this chapter:

A child who is

- (1) unmarried and under eighteen years, or
- (2) unmarried and under twenty years if the child is a full-time student at a high school, business school, or technical school, or unmarried and under twenty-two years if the child is a full-time undergraduate student at a college, or
- (3) unmarried and incapable of self-support, or
- (4) married and under eighteen years, if actually dependent upon the deceased;

The surviving spouse or reciprocal beneficiary, if either living with the deceased at the time of the injury or actually dependent upon the deceased;

A parent or grandparent, if actually dependent upon the deceased;

A grandchild, brother, or sister, if

- (1) under eighteen years or incapable of self-support, and
- (2) actually and wholly dependent upon the deceased.

(b) A person shall be deemed to be actually dependent upon the deceased, if he or she contributed all or a substantial portion of the living expenses of such person at the time of the injury.

(c) Alien dependents not residing in the United States at the time of the injury or leaving the United States subsequently shall maintain annual proof of such dependency as required by the director of labor and industrial relations.

[L 1963, c 116, pt of §1; Supp, §97-41; am L 1967, c 213, §1 and c 257, §1; HRS §386-42; am L 1971, c 87, §1; am L 1974, c 151, §1; gen ch 1985; am L 1997, c 383, §54]

[[annotations:]]

Case Notes

Alien Japanese dependent upon leaving the United States loses all rights to benefits; "leaving the U. S." construed; an alien widow leaving the U.S. ceases to be a "dependent". 27 H. 431.

Nonresident alien. 32 H. 118.

Alien "actually residing". 32 H. 699.

Illegitimate children. 31 H. 814.

Citizen of Philippine Republic. 39 H. 258.

Actual dependency of parents on child. 43 H. 173.

Part-time students, as defined by each individual educational institution, are not entitled to compensation under subsection (a) and §386-43(a). 84 H. 390 (App.), 935 P.2d 105.
Cited: 41 H. 442, 447.

§386-43

Duration of dependents' weekly benefits.

(a) The weekly benefits to dependents shall continue:

To a surviving spouse or reciprocal beneficiary, until death, remarriage, marriage, or entry into a new reciprocal beneficiary relationship with two years' compensation in one sum upon remarriage, marriage, or entry into a new reciprocal beneficiary relationship.

To or for a child,

- (1) so long as unmarried, until attainment of the age of eighteen, or
- (2) so long as unmarried, until attainment of the age of twenty if the child is a full-time student at a high school, business school, technical school, or unmarried and under twenty-two years if the child is a full-time undergraduate student at a college, or
- (3) so long as unmarried, until termination of the child's incapability of self-support, or
- (4) until marriage, except that in the case of a married child under eighteen, weekly benefits shall continue during the period of actual dependency until attainment of the age of eighteen.

To a parent or grandparent, for the duration, whether continuous or not, of such actual dependency, provided that the amount of the weekly benefits shall at no time exceed the amount payable at the time of death.

To or for a grandchild, brother, or sister, for the period in which he or she remains actually and wholly dependent until attainment of the age of eighteen or termination of the incapability of self-support.

(b) The aggregate weekly benefits payable on account of any one death shall not exceed the product of 312 times the effective maximum weekly benefit rate prescribed in section 386-31, but this limitation shall not apply with respect to benefits to a surviving spouse or reciprocal beneficiary who is physically or mentally incapable of self-support and unmarried as long as he or she remains in that condition and to benefits to a child and to benefits to an unmarried child over eighteen incapable of self-support as long as he or she is otherwise entitled to such compensation.

(c) Upon the cessation under this section of compensation to or for any person, the benefits of the remaining dependents in the same class for any further period during which they are entitled to weekly payments shall be in the amounts which they would have received, had they been the only dependents entitled to benefits at the time of the employee's death.

[L 1963, c 116, pt of §1; Supp, §97-42; am L 1966, c 6, §2; am L 1967, c 257, §2; HRS §386-43; am L 1974, c 151, §2 and c 153, §5; am L 1975, c 4, §1; gen ch 1985; am L 1997, c 383, §55]

[[annotations:]]

Case Notes

Part-time students, as defined by each individual educational institution, are not entitled to compensation under subsection (a) and §386-42(a). 84 H. 390 (App.), 935 P.2d 105.

Cited: 27 H. 431, 435.

[[Chapter 388, “Wages and Other Compensation, Payment of”]]

[[Part I]]

§388-4

Payment of wages to relatives of deceased employees.

Where an employee dies leaving any wages, vacation, or sick leave pay due the employee, the employer shall, within thirty days after such death, whether or not a personal representative has been appointed, pay the wages, vacation, or sick leave pay in an amount not exceeding \$2,000 to, and upon application by the surviving spouse or reciprocal beneficiary or, if none, by an adult child.

The employer shall require the applicant to show proof of his or her relationship to the deceased by affidavit and to acknowledge receipt of the payment in writing. Any such payment shall discharge the employer to the extent thereof and the employer shall not be liable to the decedent's estate.

Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

[L 1967, c 11, §1; HRS §388-4; am L 1984, c 174, §1; gen ch 1985; am L 1997, c 383, §56]

[[Chapter 398, “Family Leave”]]

§398-3

Family leave requirement.

(a) An employee shall be entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee or the adoption of a child, or to care for the employee's child, spouse or reciprocal beneficiary, or parent with a serious health condition.

(b) During each calendar year, the leave may be taken intermittently.

(c) Leave shall not be cumulative.

(d) If unpaid leave under this chapter conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.

(e) Nothing in this chapter shall entitle an employee to more than a total of four weeks of leave in any twelve-month period.

[L 1991, c 328, pt of §1; am L 1992, c 87, §6; am L 1997, c 383, §57]

[[annotations:]]

Cross References

Public employees; family leave, see §79-32.

[[Chapter 431, “Insurance Code”]]

[[Sub-Chapter 431:10, “Insurance Contracts Generally”]]

[[Part II, “General Rules”]]

§431:10-234

Spouses' and reciprocal beneficiaries' right in life insurance policy.

(a) Every life insurance policy made payable to or for the benefit of the spouse or the reciprocal beneficiary of the insured, and every life insurance policy assigned, transferred, or in any way made payable to a spouse or reciprocal beneficiary, or to a trustee for the benefit of a spouse or a reciprocal beneficiary, regardless of how the assignment or

transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit of such spouse or reciprocal beneficiary.

(b) Without the consent of one's spouse or reciprocal beneficiary, a married person or an individual who is registered as a reciprocal beneficiary, may contract, pay for, take out, and hold a policy on the life or health of one's spouse, reciprocal beneficiary, or children, or against loss by such spouse, or reciprocal beneficiary, or children due to disablement by accident. Premiums paid on the policy by a married person or reciprocal beneficiary shall be held to have been that person's separate estate, and the policy shall inure to the use and benefit of that person and that person's children, free from any claim by the spouse, or reciprocal beneficiary, or others.

[L 1987, c 347, pt of §2; am L 1997, c 383, §58]

[[Chapter 431, "Insurance Code" (continued)]]
[[Sub-Chapter 431:10A, "Accident and Sickness Insurance Contracts"]]
[[Part I, "Individual Accident and Sickness Policies"]]

§431:10A-104
Form of policy.

(a) A policy of accident and sickness insurance shall neither be delivered nor issued for delivery to any person in this State unless:

- (1) The entire monetary and other considerations are expressed in the policy;
- (2) The time at which the insurance takes effect and terminates is expressed in or determinable from the policy;
- (3) It purports to insure only one person, except that a policy may provide family coverage as defined in section 431:10A-103 or reciprocal beneficiary family coverage as defined in section 431:10A-601;
- (4) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower case unspaced alphabet length not less than one hundred and twenty point. The text shall include all printed matter except the name

and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions;

- (5) The exceptions and reductions of indemnity are set forth in the policy and, except the required and optional provisions set forth in section 431:10A-105 and section 431:10A-106, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as exceptions, or exceptions and reductions; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each policy form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page; and
- (7) It does not contain any provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

(b) If any policy is issued by an insurer domiciled in this State for delivery to a person residing in a territory, district or another state of the United States, and if the official having responsibility for the administration of the insurance laws of such state, district or territory shall have advised the commissioner that the policy is not subject to approval or disapproval by the official, the commissioner may by ruling require that the policy meet the standards set forth in subsection (a) and in section 431:10A-105 and section 431:10A-106.

[L 1987, c 347, pt of §2; am L 1997, c 383, §5]

§431:10A-115

Coverage of newborn children.

(a) All policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-601, on an expense incurred basis shall provide that the benefits applicable for children shall be payable for newborn infants from the moment of birth; provided that the coverage for newly born children shall be limited to the necessary care and treatment of medically diagnosed

congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for a child, the policy may require that notification of birth and payment of the required premium must be furnished the insurer within thirty-one days after the date of birth in order to have the coverage continue beyond the thirty-one-day period.

(b) This section shall not be construed to provide or include coverages for routine well-baby services. The requirements of this section shall apply to all policies delivered or issued for delivery in this State more than one hundred twenty days after June 12, 1974.

[L 1987, c 347, pt of §2; am L 1997, c 383, §6]

[[Note: this Section was not included in the original 1997 package of laws establishing reciprocal beneficiaries. Instead, it was a new law added to the HRS in 1999.]]

[§431:10A-120]

Medical foods and low-protein modified food products; treatment of inborn error of metabolism; notice.

(a) Each policy of accident and sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all health insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.

(b) Every insurer shall provide notice to its policyholders regarding the coverage required by this section. The notice shall be in writing and prominently placed in any literature or correspondence sent to policyholders and shall be transmitted to policyholders during calendar year 2000 when annual information is made available to policyholders, or in any other mailing to policyholders, but in no case later than December 31, 2000.

(c) For the purposes of this section:

"Inborn error of metabolism" means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

"Low-protein modified food product" means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
- (3) Does not include a food that is naturally low in protein.

"Medical food" means a food that is formulated to be consumed or administered enterally under the supervision of a physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

[L 1999, c 86, §2]

[[Chapter 431, "Insurance Code" (continued)]]
[[Sub-Chapter 431:10A, "Accident and Sickness Insurance Contracts" (continued)]]
[[Part II, "Group and Blanket Disability Insurance"]]

§431:10A-206

Coverage of newborn children.

All group or blanket policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-601, on an expense incurred basis shall provide coverage for newborn children in compliance with section 431:10A-115.

[L 1987, c 347, pt of §2; am L 1997, c 383, §7]

[[Chapter 431, "Insurance Code" (continued)]]
[[Sub-Chapter 431:10A, "Accident and Sickness Insurance Contracts" (continued)]]
[[Part VI, "Miscellaneous Provisions"]]

[§431:10A-601]

Reciprocal beneficiary family coverage defined; policyholder and employer responsibility for costs; availability.

(a) Any other law to the contrary notwithstanding, reciprocal beneficiary family coverage, as defined in subsection (b), shall be made available to reciprocal beneficiaries, as defined in chapter 572C, but only to the extent that family coverage, as defined in section 431:10A-103, is currently available to individuals who are not reciprocal beneficiaries.

(b) As used in this section, reciprocal beneficiary family coverage means a policy that insures, originally or upon subsequent amendment, a reciprocal beneficiary who shall be deemed the policyholder, the other party to the policyholder's reciprocal beneficiary relationship registered pursuant to chapter 572C, dependent children or any child of any other person dependent upon either reciprocal beneficiary.

(c) If a reciprocal beneficiary policyholder incurs additional costs or premiums, if any, by electing reciprocal beneficiary family coverage under this section, the employer may pay additional costs or premiums.

[L 1997, c 383, §4]

[[annotations:]]

Attorney General Opinions

Section applied only to insurers, and not mutual benefit societies or health maintenance organizations. Att. Gen. Op. 97-5.

As provided by subsection (c), an employer does not violate the reciprocal beneficiaries act [L 1997, c 383] if it chooses not to pay any additional cost or premium incurred by the employee in electing reciprocal beneficiary family coverage. Att. Gen. Op. 97-10.

Section applied to all parts of article 10A if the category of policy under consideration included family coverage, as defined in §431:10A-103. Att. Gen. Op. 97-10.

The division will be responsible for enforcement of health insurance provisions of the reciprocal beneficiaries act [L 1997, c 383]; those provisions can only be enforced against insurers, not employers. Att. Gen. Op. 97-10.

The employer is not required to pay the additional costs incurred by an employee's election for reciprocal beneficiary coverage. The focus is on the insurance contract and the policyholder and recognizes that the reciprocal beneficiary, as policyholder, is the one who incurs the cost. Att. Gen. Op. 97-10.

The placement of this section in article 10A makes clear that the legislative intent was to mandate benefits that must be made available by insurers that write contracts of insurance providing family coverage; moreover, the statute specifies that the coverage be made available to reciprocal beneficiaries, not to employers. Att. Gen. Op. 97-10.

There is nothing in the reciprocal beneficiaries act [L 1997, c 383] that would prevent an insurer from making reciprocal beneficiary family coverage available in a policy separate from the policy it uses to make regular family coverage available. Att. Gen. Op. 97-10.

To the extent that the reciprocal beneficiaries act [L 1997, c 383] does impose obligations on insurers, it may provide a basis for affected persons to seek relief by, for example, seeking declaratory relief under chapter 632. Att. Gen. Op. 97-10.

[[Chapter 431, "Insurance Code" (continued)]]
[[Sub-Chapter 431:10C, "Motor Vehicle Insurance"]]
[[Part I, "General Provisions"]]

§431:10C-103
Definitions.

As used in this article:

"Accidental harm" means bodily injury, death, sickness, or disease caused by a motor vehicle accident to a person.

"Criminal conduct" means:

- (1) The commission of an offense punishable by imprisonment for more than one year;
- (2) The operation or use of a motor vehicle with the specific intent of causing injury or damage; or
- (3) The operation or use of a motor vehicle as a converter without a good faith belief by the operator or user that the operator or user is legally entitled to operate or use such vehicle.

"Emergency medical condition" [For repeal on July 1, 2003, see L 1999, c 137, §15.] means a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average

knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

- (1) Placing the health of the individual, including the health of a pregnant woman or her unborn child, in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

“Emergency services” [For repeal on July 1, 2003, see L 1999, c 137, §15.] means:

- (1) A medical screening examination, if required by federal law, that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department, to evaluate an emergency medical condition; or
- (2) Further medical examination and treatment, if required by federal law, that is within the capabilities of the staff and facilities available at the hospital, including any trauma and burn center of the hospital to stabilize an emergency medical condition.

“Injury” means accidental harm not resulting in death.

“Insured” means:

- (1) The person identified by name as insured in a motor vehicle insurance policy complying with section 431:10C-301; and
- (2) A person residing in the same household with a named insured, specifically:
 - (A) A spouse or reciprocal beneficiary or other relative of a named insured; and
 - (B) A minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household if the person usually makes the person's home in the same family unit, which may include reciprocal beneficiaries, even though the person temporarily lives elsewhere.

“Insured motor vehicle” means a motor vehicle:

- (1) Which is insured under a motor vehicle insurance policy; or
- (2) The owner of which is a self-insurer with respect to such vehicle.

“Insurer” means every person holding a valid certificate of authority to engage in the business of making contracts of motor vehicle insurance in this State. For purposes of this article, insurer includes reciprocal or inter-insurance exchanges.

“Maximum limit” means the total personal injury protection benefits payable for coverage under section 431:10C-103.5(a), per person on account of accidental harm sustained by the person in any one motor vehicle accident shall be \$10,000, regardless of the number of motor vehicles or policies involved.

“Monthly earnings” means:

- (1) In the case of a person regularly employed, one-twelfth of the average annual compensation before state and federal income taxes at the time of injury or death;
- (2) In the case of a person regularly self-employed, one-twelfth of the average annual earnings before state and federal income taxes at the time of injury or death; or
- (3) In the case of an unemployed person or a person not regularly employed or self-employed, one-twelfth of the anticipated annual compensation before state and federal income taxes that would have been paid from the time the person would reasonably have been expected to be regularly employed.

“Motor vehicle” means any vehicle of a type required to be registered under chapter 286, including a trailer attached to such a vehicle, but not including motorcycles and motor scooters.

“Motor vehicle accident” means an accident arising out of the operation, maintenance, or use of a motor vehicle, including an object drawn or propelled by a motor vehicle.

“Motor vehicle insurance policy” means an insurance policy that meets the requirements of section 431:10C-301.

“Operation, maintenance, or use with respect to a motor vehicle” includes occupying, entering into, and alighting from it, but does not include:

- (1) Conduct in the course of loading or unloading the vehicle, unless the accidental harm occurs in the immediate proximity of the vehicle; and
- (2) Conduct within the course of a business of repairing, servicing, or otherwise maintaining vehicles, unless the conduct occurs outside the premises of such business.

“Owner” means a person who holds the legal title to a motor vehicle; except that in the case of a motor vehicle which is the subject of a security agreement or lease with a term of not less than one year with the debtor or lessee having the right to possession, such term means the debtor or lessee. Whenever transfer of title to a motor vehicle occurs, the seller shall be considered the owner until delivery of the executed title to the buyer, from which time the buyer holding the equitable title shall be considered the owner.

“Person” means, when appropriate to the context, not only individuals, but corporations, firms, associations, and societies.

“Person receiving public assistance benefits” means:

- (1) Any person receiving benefits consisting of direct cash payments through the department of human services; or
- (2) Any person receiving benefits from the Supplemental Security Income Program under the Social Security Administration.

“Regulation” means any rule and regulation promulgated by the commissioner pursuant to chapter 91.

“Replacement vehicle” means a specific, comparable, and available vehicle in as good or better overall condition than the total loss vehicle.

“Self-insurer, with respect to any motor vehicle,” means a person who has satisfied the requirements of section 431:10C-105.

“Stabilize” [For repeal on July 1, 2003, see L 1999, c 137, §15.] means the provision of medical treatment as may be necessary to assure, within reasonable medical probability, that no material deterioration of an individual's medical condition is likely to result from or occur during a transfer to another facility, if the medical condition could result in placing the health of the individual or the health of a pregnant woman or her unborn

child in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

“U-drive motor vehicle” means a motor vehicle which is rented or leased or offered for rent or lease to a customer from an operator of a U-drive rental business.

“U-drive rental business” means the business of renting or leasing to a customer a motor vehicle for a period of six months or less notwithstanding the terms of the rental or lease if in fact the motor vehicle is rented or leased for a period of six months or less.

“Underinsured motor vehicle” means a motor vehicle with respect to the ownership, maintenance, or use for which sum of the limits of all bodily injury liability insurance coverage and self-insurance applicable at the time of loss is less than the liability for damages imposed by law.

“Uninsured motor vehicle” means any of the following:

- (1) A motor vehicle for which there is no bodily injury liability insurance or self-insurance applicable at the time of the accident; or
- (2) An unidentified motor vehicle that causes an accident resulting in injury;

provided the accident is reported to the police or proper governmental authority, and the claimant notifies the claimant's insurer within thirty days or as soon as practicable thereafter, that the claimant or the claimant's legal representative has a legal action arising out of the accident.

“Without regard to fault” means irrespective of fault as a cause of accidental harm, and without application of the principle of liability based on negligence.

[L 1987, c 347, pt of §2; am L 1989, c 195, §30; am L 1992, c 123, §2 and c 124, §2; am L 1997, c 251, §13 and c 383, §59; am L 1998, c 275, §4; am L 1999, c 137, §3]

[[annotations:]]

Case Notes

See also notes at end of this chapter.

Provision excluding welfare recipients from receiving medical coverage under no-fault automobile insurance policies violated Medicaid provision of Social Security Act. 928 F.2d 898.

Vehicle was "uninsured" where vehicle operator's liability insurance did not cover injured passenger and vehicle owner had no insurance. 807 F. Supp. 98.

Households of plaintiff and spouse were separate and not a family unit for purposes of paragraph (11). 812 F. Supp. 1083.

Where named insured is a corporation, son of officer/shareholder of corporation is not an "insured" under paragraph (11). 816 F. Supp. 633.

Insurer not obligated to defend or indemnify insured, or otherwise pay any sums to defendants; defendant's shooting was no accident from insured's viewpoint or perspective. 834 F. Supp. 329.

Where insurer contended that plaintiff lacked standing to bring bad faith claim because plaintiff, a covered person under taxicab owner's insurance contract, was not defined as an insured in no-fault insurance statute, plaintiff, a third party beneficiary of taxicab owner's policy, was essentially an insured and to treat plaintiff otherwise made no sense. 947 F. Supp. 429.

Trial court erred in concluding that insurance company did not owe defendant duty to defend or indemnify on basis that shooting did not arise out of a motor vehicle "accident". 74 H. 620, 851 P.2d 321.

Car rental company not an "insurer" as defined under paragraph (5). 82 H. 351, 922 P.2d 964.

Where self-insurer rent-a-car company not an "insurer" as defined in this section, court erred in granting attorney's fees and costs under §431:10-242. 85 H. 243, 942 P.2d 507.

Insofar as Hawaii administrative rule §16-23-11 conflicted with paragraph (10)(B) (1987) by limiting survivors' benefits to \$15,000 despite the presence of expanded no-fault coverage, §16-23-11 was void as a matter of law. 88 H. 344, 966 P.2d 1070.

Plaintiff not entitled to uninsured motorist benefits under Hawaii motor vehicle insurance law where an "uninsured motor vehicle" as defined in this section was not involved in causing plaintiff's injuries. 81 H. 110 (App.), 912 P.2d 607.

Pursuant to §431:10C-304(1)(B) (1987) and paragraph (10)(B) (1987), upon the death of an insured, the insurer is obligated to provide the insured's survivor a survivor's loss benefit of up to either

- (1) \$15,000 where the insured has purchased only the basic no-fault coverage, or

- (2) the expanded limits of no-fault benefits where the insured has contracted for it under an optional additional coverage. 88 H. 345 (App.), 966 P.2d 1071.

[[Chapter 431, "Insurance Code" (continued)]]
[[Sub-Chapter 431:10H, "Long-Term Care Insurance"]]
[[Part II, "Long-Term Care Insurance Model Regulation"]]

[[Note: this Section was not included in the original 1997 package of laws establishing reciprocal beneficiaries. Instead, it was a new law added to the HRS in 1999.]]

[§431:10H-205]

Continuation or conversion.

(a) Group long-term care insurance issued in this State beginning July 1, 2000, shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For purposes of this section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) For purposes of this section, "a basis for conversion of coverage" means a policy provision that entitles an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy or any group policy that it replaced for at least six months immediately prior to termination shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(d) For purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to substantial equivalency of benefits, shall take into consideration the differences between

managed care and non-managed care plans, including but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(e) Written application for the converted policy shall be made and the first premium, if any, shall be paid as directed by the insurer no later than thirty-one days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group policy coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced a previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

- (1) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
- (2) The terminating coverage is replaced not later than thirty-one days after termination by another group coverage effective on the day following the termination of coverage:
 - (A) Providing benefits or benefits determined by the commissioner to be identical substantially equivalent to or in excess of those provided by the terminating coverage; and
 - (B) The premium for which is calculated in a manner consistent with the requirements of subsection (f).

(h) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one hundred per cent of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage or reciprocal beneficiary relationship.

(k) For purposes of this section "managed care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

[L 1999, c 93, pt of §2]

[[Chapter 431, "Insurance Code" (continued)]]
[[Sub-Chapter 431:10H, "Long-Term Care Insurance" (continued)]]
[[Part IV, "Universal Availability of Long-Term Care Insurance"]]

[[Note: this Section was not included in the original 1997 package of laws establishing reciprocal beneficiaries. Instead, it was a new law added to the HRS in 1999.]]

[§431:10H-402]

Purchase of policy and payment of premiums on an individual's behalf.

An insurer shall allow a person to purchase an individual or group long-term care insurance policy and pay the premiums for an individual or group long-term care insurance policy that covers the person, the person's spouse, or reciprocal beneficiary, as well as their parents and grandparents, and in-law parents and grandparents. Nothing in this section shall preclude an insurer from underwriting such a policy.

[L 1999, c 93, pt of §2]

[[annotations:]]

[[Included as an annotation was a table comparing the Nation Association of Insurance Commissions' 1998 Model Act of Regulations with the Model Act quoted above. The table has not been included here.]]

[[Chapter 431L, "Medicaid-Related Mandates"]]

§431L-3

Coverage of children.

(a) No insurer shall deny enrollment of a child under the health plan of the child's parent for the following grounds:

- (1) The child was born out of wedlock;
- (2) The child is not claimed as a dependent on the parent's federal tax return; or
- (3) The child does not reside with the parent or in the insurer's service area.

(b) Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:

- (1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;
- (2) Permit the custodial parent (or the provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and
- (3) Make payments on claims submitted in accordance with paragraph (2) directly to the custodial parent, the provider, or the state medicaid agency.

(c) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-601, the insurer shall be required:

- (1) To permit the parent to enroll, under the family coverage or reciprocal beneficiary family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;
- (2) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage or reciprocal beneficiary family coverage upon application of the child's other parent, the state agency administering the medicaid program, or

the state agency administering the child support enforcement program;
and

- (3) Not to disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:
 - (A) The court or administrative order is no longer in effect; or
 - (B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.

(d) An insurer may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

[L 1995, c 83, pt of §2; am L 1997, c 383, §8]

§431L-4 Employer obligations.

Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this State, the employer is required:

(1) To permit the parent to enroll under family coverage, as defined in section 431:10A-103 or reciprocal beneficiary family coverage, as defined in section 431:10A-601, any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage or reciprocal beneficiary family coverage upon application by the child's other parent, by the state agency administering the medicaid program, or by the state agency administering the child support enforcement program;

(3) Not to disenroll (or eliminate coverage of) any such child unless the employer is provided satisfactory written evidence that:

- (A) The court or administrative order is no longer in effect;

- (B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or
- (C) The employer has eliminated family health coverage or reciprocal beneficiary family coverage for all of its employees; and

(4) To withhold from the employee's compensation the employee's share (if any) of premiums for health coverage and to pay this amount to the insurer.

[L 1995, c 83, pt of §2; am L 1997, c 383, §9]

[[Chapter (Article) 432:1 “Mutual Benefit Societies”]]
[[Part I, “General Provisions”]]

[[No part of this Section directly mentions reciprocal beneficiaries, nor was the Section mentioned in the group of laws passed in 1997 establishing reciprocal-beneficiary rights and benefits. The Section is included here because the annotation contains a reference to reciprocal beneficiaries.]]

§432:1-101

Scope; exemptions.

The provisions of this article shall apply to mutual benefit societies as defined herein. Except as expressly provided in this article, mutual benefit societies shall be exempt from the provisions of the insurance code. No law enacted after July 1, 1988, shall apply to mutual benefit societies unless such societies are expressly designated therein.

[L 1987, c 347, pt of §2]

[[annotations:]]

Revision Note

"July 1, 1988," substituted for "the effective date of this article".

Attorney General Opinions

Based on provision, the requirement of §431:10A-601 as set forth in §4 of reciprocal beneficiaries act [L 1997, c 383] cannot be interpreted to apply to mutual benefit societies. Att. Gen. Op. 97-5.

§432:1-104

Definitions.

For the purposes of this article:

- (1) Commissioner means the insurance commissioner of the State of Hawaii.
- (2) Mutual benefit society is any corporation, unincorporated association, society, or entity:
 - (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:
 - (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or reciprocal beneficiaries or children, or
 - (ii) Making provision for the payment of any other benefits to or for its members, whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or
 - (B) Organized and carried on for any purpose, which:
 - (i) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments or otherwise, and
 - (ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members, whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or

- (C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in subparagraphs (A) and (B).

Participating in a prepaid legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article.

[L 1987, c 347, pt of §2; am L 1993, c 350, §18; am L 1997, c 383, §60]

[[annotations:]]

Attorney General Opinions

Effect of amendment to section [by L 1997, c 383] was to allow, but not require, a mutual benefit society to make provision for payment of benefits to reciprocal beneficiaries. Att. Gen. Op. 97-5.

[[Chapter (Article) 432:2 “Fraternal Benefit Societies”]]
[[Part II, “Membership”]]

[[No part of this Section directly mentions reciprocal beneficiaries, nor was the Section mentioned in the group of laws passed in 1997 establishing reciprocal-beneficiary rights and benefits. The Section is included here because the annotation contains a reference to reciprocal beneficiaries.]]

§432:2-201

Qualifications for membership.

(a) A society shall specify in its laws or rules:

- (1) Eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one;
- (2) The process for admission to membership for each membership class; and
- (3) The rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(b) A society may also admit social members who shall have no voice or vote in the management of its insurance affairs.

(c) Membership rights in the society are personal to the member and are not assignable.

[L 1987, c 347, pt of §2]

[[annotations:]]

Attorney General Opinions

The division will be responsible for enforcement of health insurance provisions of the reciprocal beneficiaries act [L 1997, c 383], because those provisions are placed within the insurance code and, therefore, are within the commissioner's enforcement responsibility under subsection (b); those provisions can only be enforced against insurers, not employers. Att. Gen. Op. 97-10.

Case Notes

Commissioner's rulemaking authority enabled commissioner to adopt procedural mechanism, i.e., peer review process, through which guidelines for service provider fees and frequency of treatment may be exceeded. 927 F. Supp. 1330.

[[Chapter 432D, "Health Maintenance Organization Act"]]

[[No part of this Section directly mentions reciprocal beneficiaries, nor was the Section mentioned in the group of laws passed in 1997 establishing reciprocal-beneficiary rights and benefits. The Section is included here because the annotation contains a reference to reciprocal beneficiaries.]]

§432D-23

Required provisions and benefits.

Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, and 431:10A-119, and 431:10A-120 and chapter 431M.

[L 1995, c 179, pt of §1; am L 1999, c 77, §8 and c 86, §4]

[[annotations:]]

Attorney General Opinions

No reference was made to new section added to article 10A of chapter 431 [§431:10A-601], by §4 of reciprocal beneficiaries act [L 1997, c 383]; thus, §431:10A-601 did not apply to health maintenance organizations. Att. Gen. Op. 97-5.

[[Chapter 443B, "Collection Agencies"]]

§443B-1

Definitions.

As used in this chapter:

"Client" means a person who offered or extended credit which created a debt, or to whom a debt is owed, and who engages the professional services of a collection agency. The term does not include any person who receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of a debt for another.

"Collection agency" means any person, whether located within or outside this State, who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission, fixed fee, or a portion of the sums so collected.

"Collection agency" includes:

- (1) Any person using any name other than the person's own in collecting the person's own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;
- (2) Any person who, in the conduct of the person's business for a fee, regularly repossesses any merchandise or chattels for another; and
- (3) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon the assigned claims or money due on accounts or other forms of indebtedness in the person's own name; provided that any suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignee.

"Collection agency" does not include licensed attorneys at law acting within the scope of their profession, licensed real estate brokers, and salespersons residing in this

State when engaged in the regular practice of their profession, nor banks, trust companies, building and loan associations, savings and loan associations, financial services loan companies, credit unions, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit persons or in other similar capacity for a single employer who is not a collection agency, nor any public officer or any person acting under an order of court.

“Communication” means directly or indirectly conveying information regarding a debt to any person by any means.

“Debt” means any obligation or alleged obligation of a consumer to pay money or other forms of payment arising out of a transaction in which the money, property, insurance, or services, which are the subject of the transaction, are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

“Debtor” means any person or the person's spouse or reciprocal beneficiary, parent (if the person is a minor), guardian, executor, or administrator obligated or allegedly obligated to pay a debt.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Material change” means any change of circumstance which might affect a collection agency's registration, including the assigning, selling, leasing, encumbering, or other transfer of the rights, privileges, and obligations of a collection agency, whether voluntarily or involuntarily or directly or indirectly, including by transfer of fifty-one per cent of control of any collection agency, whether by change in ownership or otherwise.

“Principal collector” means an individual who has been designated by a collection agency to assume responsibility for the operations and activities of the agency's office in this State.

“Regularly repossesses” means to locate, confiscate, and return merchandise or chattels to a client whenever the client requires service.

“Regular practice” means duties being of the sort or kind that are expected, ordinary, or typical of the profession.

“Regular wage or salary” means the expected, ordinary, or typical payment for employment.

[L 1987, c 191, pt of §1; am L 1989, c 140, §2 and c 266, §3; am L 1990, c 246, §2; am L 1992, c 12, §1 and c 202, §58; am L 1997, c 383, §61; am L 1999, c 254, §3]

[[Chapter 453, “Medicine and Surgery”]]
[[Part I, “Generally”]]

§453-15

Who shall give consent to a postmortem examination.

A pathologist or any licensed physician or surgeon may conduct a postmortem examination when written consent thereto is given by whoever of the following assumes custody of the body for purposes of burial: father, mother, husband, wife, reciprocal beneficiary, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or person, including a governmental agency, charged by law with the responsibility for the burial.

If two or more such persons assume custody of the body, the consent of one of them is sufficient. The consent shall include the consent to the retention by the pathologist or licensed physician or surgeon who conducts the postmortem examination of tissues, including fetal material, of the body removed at the time of the postmortem examination to be used for necessary or advisable scientific investigation, including research, teaching, and therapeutic purposes.

[L 1957, c 309, §1; Supp, §64-14; am L 1967, c 188, §1; HRS §453-15; am L 1997, c 383, §62]

[[Chapter 509, “Conveyances to Two or More”]]

§509-2

Creation of joint tenancy, tenancy by the entirety, and tenancy in common.

(a) Land, or any interest therein, or any other type of property or property rights or interests or interest therein, may be conveyed by a person to oneself and another or others as joint tenants, or by a person to oneself and one's spouse or reciprocal beneficiary, or by spouses to themselves, or by reciprocal beneficiaries to themselves, as tenants by the entirety, or by joint tenants to themselves and another or others as joint tenants, or tenants in common to themselves or to themselves and another or others as joint tenants, or by tenants by the entirety to themselves or themselves and another or others as joint tenants or as tenants in common, or by one tenant by the entirety to the tenant's spouse or reciprocal

beneficiary of all of the tenant's interest or interests, without the necessity of conveying through a third party, and each such instrument shall be construed as validly creating a joint tenancy, tenancy by the entirety, tenancy in common, or single ownership, as the case may be, if the tenor of the instrument manifestly indicates such intention.

(b) For the purposes of this chapter: "Reciprocal beneficiary" means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter 572C, and has a valid certificate of reciprocal beneficiary relationship that has not been terminated.

[L 1941, c 167, §1; RL 1945, §12781; RL 1955, §345-2; am L 1957, c 237, §1; HRS §509-2; gen ch 1993; am L 1997, c 383, §10]

[[annotations:]]

Case Notes

An estate by the entirety is not subject to claims of creditors of one of the spouses. 57 H. 608, 561 P.2d 1291.

Right of survivorship of a joint tenant is subject to levy. 59 H. 277, 580 P.2d 843.

Section states no presumption in favor of tenancy in common. 59 H. 474, 583 P.2d 966.

Property management agreement neither conveyed property nor altered the tenancy by the entirety; purpose of section and relevant antecedent is to eliminate common law requisite of a "straw man" in creating a joint tenancy. 64 H. 236, 639 P.2d 400.

[[Chapter 516, "Residential Leaseholds"]]

[[Part III, "Rights of Lessees"]]

§516-71

Residential lease; disclosure.

(a) Except as otherwise provided for in this section, for any sale of a leasehold residential lot, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract, the seller shall directly or through the seller's agent provide to the buyer, a copy of the original recorded lease and any amendments thereto for the buyer's approval and acceptance. A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse or reciprocal beneficiary, parent or child of the seller, or to any stranger by devise, descent, court order, or by operation of law, including, but not limited to, any transfer by

foreclosure, bankruptcy, or partition sale. Upon receipt of the original lease and amendments thereto, the buyer shall have ten calendar days to review, accept, or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer shall acknowledge receipt of the lease documents specified under subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary, as set forth on the optional standardized summary form in this chapter, or in a form similar to the optional standardized summary form, of the lease provisions in plain language which shall contain information on the following: the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary, satisfied by use of a Hawaii governmental publication, of commonly used lease terms in plain language; and
- (3) A statement that the buyer has read and understands the provisions of the standardized summary of the lease provisions.

(c) Within ten calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer, on a standardized form, may agree to reduce or extend the time period provided herein for production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer. Buyers other than natural persons may waive, in writing, all the requirements of this section.

[L 1989, c 168, §3; am L 1990, c 277, pt of §1; am L 1991, c 276, §3; am L 1997, c 383, §63]

[[Chapter 560, “Uniform Probate Code”]]
[[Sub-Chapter (Article) 560:1, “Short Title, Construction, General Provisions”]]
[[Part 2, “Definitions”]]

General definitions.

Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this chapter:

"Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

"Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of article III.

"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 designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

"Beneficiary designation" refers to a governing instrument naming 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.

"Child" includes an individual entitled to take as a child under this chapter by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

"Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

“Court” means the circuit court in this State having jurisdiction in matters relating to the affairs of decedents.

“Conservator” means a person who is appointed by a court to manage the estate of a protected person, including a guardian of the property.

“Descendant” of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this chapter.

“Devise”, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

“Devisee” means a person designated in a will to receive a devise. For the purposes of article II, in the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

“Disability” means cause for a protective order as described in section 560:5-401.

“Distributee” means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

“Estate” includes the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

“Exempt property” means that property of a decedent's estate which is described in section 560:2-403.

“Fiduciary” includes a personal representative, guardian, conservator, and trustee.

“Foreign personal representative” means a personal representative appointed by another jurisdiction.

“Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

“Governing instrument” means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

“Guardian” means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

“Heirs”, except as controlled by section 560:2-711, means persons, including the surviving spouse or reciprocal beneficiary and the State, who are entitled under the statutes of intestate succession to the property of a decedent.

“Incapacitated person” means an individual described in section 560:5-101.

“Informal proceedings” means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

“Interested person” includes heirs, devisees, children, spouses or reciprocal beneficiaries, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

“Issue” of a person means descendant as defined in this section.

“Joint tenants with the right of survivorship” and “community property with the right of survivorship” includes tenancies by the entirety and co-ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

“Lease” includes an oil, gas, or other mineral lease.

“Letters” includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship. Unless otherwise provided by order of the court or registrar, letters testamentary and letters of administration shall only be effective for three years unless renewed for good cause, and such limitation shall be stated on the face of the letters.

“Minor” means a person who is under eighteen years of age.

“Mortgage” means any conveyance, agreement, or arrangement in which property is encumbered or used as security.

“Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of decedent's death.

“Organization” means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

“Parent” includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this chapter by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

“Payor” means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

“Person” means an individual or an organization.

“Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

“Petition” means a written request to the court for an order after notice.

“Proceeding” includes action at law and suit in equity. “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

“Protected person” is as defined in section 560:5-101.

“Protective proceeding” means a proceeding described in section 560:5-101.

“Registrar” refers to the official of the court designated to perform the functions of registrar as provided in section 560:1-307.

“Security” includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

“Settlement”, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

“Special administrator” means a personal representative as described by sections 560:3-614 through 560:3-618.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

“Successor personal representative” means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

“Successors” means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this chapter.

“Supervised administration” refers to the proceedings described in article III, part 5.

“Survive” means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under section 560:2-104 or 560:2-702. The term includes its derivatives, such as “survives”, “survived”, “survivor”, “surviving”.

“Testacy proceeding” means a proceeding to establish a will or determine intestacy.

“Testator” includes an individual of either sex.

“Trust” includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in article VI, custodial arrangements pursuant to chapters 553A and 554B, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security

arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

“Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

“Ward” means an individual described in section 560:5-101.

“Will” includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[annotations:]]

Case Notes

Appellant was not an "interested person", as defined in this section, who could petition the court under §560:3-614 for appointment as special administrator where appellant had no familial relationship to decedent's family, did not have a property right or claim against decedent's estate, and did not have priority under §560:3-203 to be appointed as personal representative of decedent's estate; circuit court thus properly denied appellant's petition. 88 H. 148, 963 P.2d 1124.

Decisions under prior law. Hearing on complaint for determination and declaration of heirs was not a probate proceeding. 77 H. 251 (App.), 883 P.2d 673.

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:2, “Intestate Successions and Wills”]]
[[Part I.]]

§560:2-102

Share of spouse or reciprocal beneficiary.

The intestate share of a decedent's surviving spouse or reciprocal beneficiary is:

(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, 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, 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, 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.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-103

Share of 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.

[L 1996, c 288, pt of §1; am L 1997, c 244, §15 and c 383, §19]

[[annotations:]]
Rules of Court

Determination of heirs, see HPR rule 73.

§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.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:2, “Intestate Successions and Wills” (continued)]]
[[Part II, “Elective Share of Surviving Spouse”]]

Cross References [[For This Part]]

Applies only to the estates of decedents dying after January 1, 1997; for other effect and transition provisions, see §560:8-201.

§560:2-201

Definitions.

In this part: As used in sections other than section 560:2-205,

"decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under section 560:2-205.

“Fractional interest in property held in joint tenancy with the right of survivorship”, whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

“Marriage”, as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

“Nonadverse party” means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

“Power” or “power of appointment” includes a power to designate the beneficiary of a beneficiary designation.

“Presently exercisable general power of appointment” means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent's self, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

“Probate estate” means property that would pass by intestate succession if the decedent died without a valid will.

“Property” includes values subject to a beneficiary designation.

“Reciprocal beneficiary” means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter 572C, and has a valid certificate of reciprocal beneficiary relationship that has not been terminated.

“Reciprocal beneficiary relationship” is the registered status of two adults defined in chapter 572C.

“Right to income” includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

“Transfer”, as it relates to a transfer by or of the decedent, includes:

- (1) An exercise or release of a presently exercisable general power of appointment held by the decedent;
- (2) A lapse at death of a presently exercisable general power of appointment held by the decedent; and
- (3) An exercise, release, or lapse of a general power of appointment that the decedent created in the decedent's self of a power described in section 560:2-205(2)(B) that the decedent conferred on a nonadverse party.

[L 1996, c 288, pt of §1; am L 1997, c 383, §11]

[[annotations:]]

Cross References

Applies only to the estates of decedents dying after January 1, 1997; for other effect and transition provisions, see §560:8-201.

§560:2-202

Elective share.

(a) Elective-share amount. The surviving spouse or reciprocal beneficiary of a decedent who dies domiciled in this State has 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 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 probate estate and nonprobate transfers to others under section 560:2-209(b) and (c) is less than \$50,000, the surviving spouse or reciprocal beneficiary is entitled to a supplemental elective-share amount equal to \$50,000 minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's 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).

(c) Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse or reciprocal beneficiary, the surviving spouse's or reciprocal beneficiary's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(d) Non-domiciliary. The right, if any, of the surviving spouse or reciprocal beneficiary of a decedent who dies domiciled outside this State to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

[L 1996, c 288, pt of §1; am L 1997, c 383, §12]

[[annotations:]]
Rules of Court

Distribution, see HPR rule 90(c).

§560:2-203
Composition of the augmented estate.

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 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 net probate estate, the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse or reciprocal beneficiary, and the surviving spouse's or reciprocal beneficiary's property and nonprobate transfers to others.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-205
Decedent's nonprobate transfers to others.

The value of the augmented estate includes 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 of:
 - (A) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is 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 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 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 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 sum of all deposits to the account;
 - (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 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 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;
 - (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 the value of the property subject to the power, and the amount included with respect to a power over income is 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 the greater amount;
- (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 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 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 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 over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, 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 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;
- (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 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.

[L 1996, c 288, pt of §1; am L 1997, c 244, §1 and c 383, §19]

§560:2-206

Decedent's nonprobate transfers to the surviving spouse or reciprocal beneficiary.

Excluding property passing to the surviving spouse or reciprocal beneficiary under the federal social security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse or reciprocal beneficiary, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse or reciprocal beneficiary by reason of the decedent's death, including:

- (1) The decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse or reciprocal beneficiary as surviving joint tenant;
- (2) The decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse or reciprocal beneficiary as surviving co-owner; and
- (3) All other property that would have been included in the augmented estate under section 560:2-205(1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse or reciprocal beneficiary, surviving spouse or reciprocal beneficiary, the decedent, or the decedent's creditors, estate or estate creditors.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-207

Surviving spouse's or reciprocal beneficiary's property and nonprobate transfers to others.

(a) Included property. Except to the extent included in the augmented estate under section 560:2-204 or 560:2-206, the value of the augmented estate includes the value of:

- (1) Property that was owned by the decedent's surviving spouse or reciprocal beneficiary at the decedent's death, including:
 - (A) The surviving spouse's or reciprocal beneficiary's fractional interest in property held in joint tenancy with the right of survivorship;
 - (B) The surviving spouse's or reciprocal beneficiary's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

- (C) Property that passed to the surviving spouse or reciprocal beneficiary by reason of the decedent's death, but not including the spouse's or reciprocal beneficiary's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and
- (2) Property that would have been included in the surviving spouse's or reciprocal beneficiary's nonprobate transfers to others, other than the spouse's or reciprocal beneficiary's fractional and ownership interest included under subsection (a)(1)(A) or (B), had the spouse or reciprocal beneficiary been the decedent.

(b) Time of valuation. Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse or reciprocal beneficiary into account, but, for purposes of subsection (a)(1)(A) and (B), the values of the spouse's or reciprocal beneficiary's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of subsection (a)(2), proceeds of insurance that would have been included in the spouse's or reciprocal beneficiary's nonprobate transfers to others under section 560:2-205(1)(D) are not valued as if the spouse or reciprocal beneficiary were deceased.

(c) Reduction for enforceable claims. The value of property included under this section is reduced by enforceable claims against the surviving spouse or reciprocal beneficiary.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-208

Exclusions, valuation, and overlapping application.

(a) Exclusions:

- (1) The value of any property is excluded from the decedent's nonprobate transfers to others:
 - (A) To the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or

- (B) If the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse or reciprocal beneficiary.
- (2) The augmented estate shall not include the value of any property that either:
 - (A) Is held in a trust created and funded by any party other than the decedent, the surviving spouse, or the reciprocal beneficiary; or
 - (B) Was received by either spouse during marriage or either reciprocal beneficiary during a reciprocal beneficiary relationship, by gift, devise, inheritance or distribution from a trust created and funded by any party other than the decedent, the surviving spouse, or the reciprocal beneficiary; provided that such property was kept segregated from property includible in the augmented estate.

(b) Valuation. The value of property:

- (1) Included in the augmented estate under section 560:2-205, 560:2-206, or 560:2-207 is reduced in each category by enforceable claims against the included property; and
- (2) Includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(c) Overlapping application; no double inclusion. In case of overlapping application to the same property of the paragraphs or subparagraphs of section 560:2-205, 560:2-206, or 560:2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

[L 1996, c 288, pt of §1; am L 1997, c 383, §13]

§560:2-209

Sources from which elective share payable.

(a) In a proceeding for an elective share, the following are 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 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 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) 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 and in the decedent's nonprobate transfers to others, other than amounts included under section 560:2-205(3)(A) or (C), are 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 applied 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) If, after the application of subsections (a) and (b), 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 applied 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.

[L 1996, c 288, pt of §1; am L 1997, c 383, §14]

§560:2-210

Personal liability of recipients.

(a) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's or reciprocal beneficiary's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which he or she is liable.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in section 560:2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-211

Proceeding for elective share; time limit.

(a) Except as provided in subsection (b), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. Except as provided in subsection (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective-share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse or reciprocal beneficiary may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse or reciprocal beneficiary gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown by the surviving spouse or reciprocal beneficiary may extend the time for election. If the court grants the spouse's or reciprocal beneficiary's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse or reciprocal beneficiary makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse or reciprocal beneficiary must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

(d) The surviving spouse or reciprocal beneficiary may withdraw the spouse's or reciprocal beneficiary's demand for an elective share at any time before entry of a final determination by the court.

(e) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 560:2-209 and 560:2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under sections 560:2-209 and 560:2-210 had relief been secured against all persons subject to contribution.

(f) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-212

Right of election personal to surviving spouse or reciprocal beneficiary; incapacitated surviving spouse or reciprocal beneficiary.

(a) Surviving spouse or reciprocal beneficiary must be living at time of election. The right of election may be exercised only by a surviving spouse or reciprocal beneficiary who is living when the petition for the elective share is filed in the court under section 560:2-211(a). If the election is not exercised by the surviving spouse or reciprocal beneficiary personally, it may be exercised on the surviving spouse's or reciprocal beneficiary's behalf by the spouse's or reciprocal beneficiary's conservator, guardian, or agent under the authority of a power of attorney.

(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 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 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 the custodial trustee;
- (2) The surviving spouse or reciprocal beneficiary is the beneficiary; and
- (3) The custodial trust is 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.

(c) Custodial trust. For purposes of subsection (b), chapter 554B must be applied as if section 554B-6(b) thereof were repealed and sections 554B-2(e), 554B-9(b), and 554B-17(a) were amended to read as follows:

- (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary regains capacity, the beneficiary then acquires the power to terminate the custodial trust by delivering to the custodial trustee a writing signed by the beneficiary declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary;
- (2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the health, education, maintenance and support of the beneficiary and individuals who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order but with regard to other support, income, and property of the beneficiary and benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the beneficiary must qualify on the basis of need; provided that the custodial trustee shall not make any distributions of the principal of the custodial trust unless the custodial trustee determines, in the trustee's discretion, that the remaining assets of the surviving spouse or reciprocal beneficiary cannot or should not be

first used instead for the spouse's or reciprocal beneficiary's benefit. The custodial trustee may make such a determination when, for example, the sole remaining asset of the surviving spouse or reciprocal beneficiary is the spouse's or reciprocal beneficiary's residence, or similar factors would exist that would make use or liquidation of the surviving spouse's or reciprocal beneficiary's own assets inappropriate;

- (3) Upon the beneficiary's death, the custodial trustee shall transfer the unexpended custodial trust property in the following order:
 - (A) Under the residuary clause, if any, of the will of the beneficiary's predeceased spouse or reciprocal beneficiary against whom the elective share was taken, as if that predeceased spouse or reciprocal beneficiary died immediately after the beneficiary; or
 - (B) To that predeceased spouse's or reciprocal beneficiary's heirs under section 560:2-711.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-213

Waiver of right to elect and of other rights.

(a) The right of election of a surviving spouse or reciprocal beneficiary and the rights of the surviving spouse or reciprocal beneficiary to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse or reciprocal beneficiary.

(b) A surviving spouse's or reciprocal beneficiary's waiver is not enforceable if the surviving spouse or reciprocal beneficiary proves that:

- (1) The surviving spouse or reciprocal beneficiary did not execute the waiver voluntarily; or
- (2) The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse or reciprocal beneficiary:
 - (A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

- (B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and
- (C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or reciprocal beneficiary or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse or reciprocal beneficiary in the property of the other and a renunciation by each of all benefits that would otherwise pass to the spouse or reciprocal beneficiary from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-214

Protection of payors and other third parties.

(a) Although under section 560:2-205 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or reciprocal beneficiary or spouse's or reciprocal beneficiary's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or

served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction or probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property, and, upon its determination under section 560:2-211(d), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 560:2-211(a) or, if filed, the demand for an elective share is withdrawn under section 560:2-211(d), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this part.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:2, “Intestate Successions and Wills” (continued)]]
[[Part III, “Spouse and Children Unprovided For in Wills”]]

§560:2-301

Entitlement of spouse or reciprocal beneficiary; premarital will.

(a) If a testator's surviving spouse married the testator, or the testator's reciprocal beneficiary entered into a reciprocal beneficiary relationship with the testator, after the testator executed the testator's will, the surviving spouse or reciprocal beneficiary is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse or reciprocal beneficiary would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse or entered into a reciprocal beneficiary relationship with the surviving reciprocal beneficiary and who is not a child of the surviving spouse or reciprocal beneficiary, nor is devised to a descendant of such a child or passes under section 560:2-603 or 560:2-604 to such a child or to a descendant of such a child, unless:

- (1) It appears from the will or other evidence that the will was made in contemplation of:

- (A) The testator's marriage to the surviving spouse; or
 - (B) The testator's entering into a reciprocal beneficiary relationship with the reciprocal beneficiary;
- (2) The will expresses the intention that it is to be effective notwithstanding any subsequent marriage, or reciprocal beneficiary relationship; or
 - (3) The testator provided for the spouse or reciprocal beneficiary by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, or reciprocal beneficiary, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse, or entered a reciprocal beneficiary relationship with the reciprocal beneficiary, and who is not a child of the surviving spouse or reciprocal beneficiary, or a devise or substitute gift under section 560:2-603 or 560:2-604 to a descendant of such a child, abate as provided in section 560:3-902.

[L 1996, c 288, pt of §1; am L 1997, c 383, §15]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:2, “Intestate Successions and Wills” (continued)]]
[[Part IV, “Exempt Property and Allowances”]]

§560:2-402

Homestead allowance.

A decedent's surviving spouse or reciprocal beneficiary is entitled to a homestead allowance of \$15,000. If there is no surviving spouse or reciprocal beneficiary, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$15,000 divided by the number of minor and dependent children of the decedent.

The homestead allowance is exempt from and has priority over all claims against the estate.

Homestead allowance is 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.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[annotations:]]
Rules of Court

Distribution, see HPR rule 90(a).

§560:2-403
Exempt property.

In addition to the homestead allowance, the decedent's surviving spouse or reciprocal beneficiary is entitled from the estate to a value, not exceeding \$10,000 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 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 or if there is not \$10,000 worth of exempt property in the estate, the spouse, reciprocal beneficiary, or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000 value.

Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance.

These rights are 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.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[annotations:]]
Rules of Court

Distribution, see HPR rule 90(a).

§560:2-404

Family allowance.

(a) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse or reciprocal beneficiary and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse or reciprocal beneficiary, if living, for the use of the surviving spouse or reciprocal beneficiary and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse or reciprocal beneficiary, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse or reciprocal beneficiary, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse, reciprocal beneficiary, or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[annotations:]]

Rules of Court

Distribution, see HPR rule 90(b).

§560:2-405

Source, determination, and documentation.

(a) If the estate is otherwise sufficient, property specifically devised may 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 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 or periodic installments not exceeding \$1,500 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.

(b) If the right to an elective share is exercised on behalf of a surviving spouse or reciprocal beneficiary who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under section 560:2-212(b).

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:2, “Intestate Successions and Wills” (continued)]]
[[Part VII, “Rules of Construction Applicable to
Wills and Other Governing Instruments”]]

§560:2-705

Class gifts construed to accord with intestate succession.

(a) Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(b) In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse or reciprocal beneficiary, or surviving spouse or reciprocal beneficiary.

(c) In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-711

Interest in "heirs" and like.

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family", or language of similar import, the property passes to those persons, including the State, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment.

If the designated individual's surviving spouse or reciprocal beneficiary is living but is remarried or has terminated the reciprocal beneficiary relationship at the time the disposition is to take effect in possession or enjoyment, the surviving spouse or reciprocal beneficiary is not an heir of the designated individual.

[L 1996, c 288, pt of §1; am L 1997, c 383, §16]

[[annotations:]]

Cross References

Effect and transition of L 1996, c 288 amendments, see §560:8-201.

Rules of Court

Determination of heirs, see HPR rule 73.

[[Chapter 560, "Uniform Probate Code" (continued)]]

[[Sub-Chapter (Article) 560:2, "Intestate Successions and Wills" (continued)]]

[[Part VIII, "General Provisions Concerning Probate and Nonprobate Transfers"]]

§560:2-802

Effect of divorce, annulment, decree of separation, and termination of reciprocal beneficiary relationship.

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for

purposes of this section. An individual who has terminated a reciprocal beneficiary relationship with the decedent is not deemed a surviving reciprocal beneficiary unless, by virtue of a subsequent registration as a reciprocal beneficiary, the individual is the reciprocal beneficiary of the decedent at the time of death.

(b) For purposes of parts 1, 2, 3, and 4 of this article, and of section 560:3-203, a surviving spouse or reciprocal beneficiary does not include:

- (1) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;
- (2) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual;
- (3) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights; or
- (4) An individual who does not have a certificate of reciprocal beneficiary relationship declaring the decedent as their reciprocal beneficiary or the relationship has been terminated under chapter 572C or otherwise.

[L 1996, c 288, pt of §1; am L 1997, c 383, §17]

§560:2-803

Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.

(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.

"Governing instrument" means a governing instrument executed by the decedent.

"Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or

immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent's self in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(b) Forfeiture of statutory benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's, reciprocal beneficiary's, or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(c) Revocation of benefits under governing instruments. The felonious and intentional killing of the decedent:

- (1) Revokes any revocable:
 - (A) Disposition or appointment of property made by the decedent to the killer in a governing instrument;
 - (B) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and
 - (C) Nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and
- (2) Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

(d) Effect of severance. A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(e) Effect of revocation. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked

nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(f) Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(g) Felonious and intentional killing; how determined. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(h) Protection of payors and other third parties.

- (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section;
- (2) Written notice of a claimed forfeiture or revocation under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the

judicial circuit of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(i) Protection of bona fide purchasers; personal liability of recipient.

- (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:2-804

Revocation of probate and nonprobate transfers by divorce or termination of reciprocal beneficiary relationship; no revocation by other changes of circumstances.

(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 not 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, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, 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, 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 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, 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 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.

(b) Revocation upon divorce or termination. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the estate made between the divorced individuals before or after the marriage, divorce, annulment, between two former reciprocal beneficiaries before the termination of a reciprocal beneficiary relationship, the divorce or annulment of a marriage or the termination of a reciprocal beneficiary relationship:

- (1) Revokes any revocable:
 - (A) Disposition or appointment of property made by a divorced individual or a former reciprocal beneficiary to the individual's former spouse or reciprocal beneficiary in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse or reciprocal beneficiary;
 - (B) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or an individual's former reciprocal beneficiary or on a relative of the divorced individual's former spouse or an individual's former reciprocal beneficiary; and
 - (C) Nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse or an individual's former reciprocal beneficiary or a relative of the former reciprocal beneficiary to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and
- (2) Severs the interests of the former spouses or reciprocal beneficiaries in property held by them at the time of the divorce, annulment, or termination, as joint tenants with the right of survivorship or as

community property with the right of survivorship, transforming the interests of the former spouses or reciprocal beneficiaries into tenancies in common.

(c) Effect of severance. A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses or reciprocal beneficiaries unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Effect of revocation. Provisions of a governing instrument are given effect as if the former spouse or reciprocal beneficiary and relatives of the former spouse or reciprocal beneficiary disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse or reciprocal beneficiary and relatives of the former spouse or reciprocal beneficiary died immediately before the divorce, annulment, or termination.

(e) Revival if divorce nullified or reciprocal beneficiary relationship re-registered. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment. Provisions revoked solely by this section are revived by an individual's re-registering a reciprocal beneficiary relationship to the former reciprocal beneficiary.

(f) No revocation for other change of circumstances. No change of circumstances other than as described in this section and in section 560:2-803 effects a revocation.

(g) Protection of payors and other third parties.

- (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, remarriage, termination, or re-registration of a reciprocal beneficiary relationship, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, remarriage, termination, or re-registration of a reciprocal beneficiary relationship. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section;
- (2) Written notice of the divorce, annulment, remarriage, termination, or re-registration of a reciprocal beneficiary relationship under this

subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, remarriage, termination, or re-registration of a reciprocal beneficiary relationship, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(h) Protection of bona fide purchasers; personal liability of recipient.

- (1) A person who purchases property from a former spouse, former reciprocal beneficiary, relative of a former spouse or reciprocal beneficiary, or any other person for value and without notice, or who receives from a former spouse, a former reciprocal beneficiary, relative of a former spouse or reciprocal beneficiary, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, former reciprocal beneficiary, relative of a former spouse or reciprocal beneficiary, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, former reciprocal beneficiary, relative of the former spouse or reciprocal beneficiary, or

any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

[L 1996, c 288, pt of §1; am L 1997, c 383, §18]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:3, “Probate of Wills and Administration”]]
[[Part II, “Venue for Probate and Administration;
Priority to Administer; Demand for Notice”]]

§560:3-203

Priority among persons seeking appointment as personal representative.

(a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) The person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) The surviving spouse or reciprocal beneficiary of the decedent who is a devisee of the decedent;
- (3) Other devisees of the decedent;
- (4) The surviving spouse or reciprocal beneficiary of the decedent;
- (5) Other heirs of the decedent; and
- (6) Forty-five days after the death of the decedent, any creditor.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection (a) apply except that:

- (1) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

- (2) In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(c) A person entitled to letters under subsection (a)(2) to (5), and a person aged eighteen and over who would be entitled to letters but for the person's age, may nominate a qualified person to act as personal representative. 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 must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators or guardians of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

- (1) An individual under the age of eighteen; or
- (2) A person whom the court finds unsuitable in formal proceedings.

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:3, “Probate of Wills and Administration” (continued)]]
[[Part III, “Informal Probate and Appointment Proceedings”]]

§560:3-301

Informal probate or appointment proceedings; application; contents.

(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, 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 will probated 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 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;

- (6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in 560:3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which 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.

(b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[annotations:]]
Rules of Court

Pleadings, see Hawaii Probate Rules, part A(II); HPR rules 17, 50.

§560:3-302

Informal probate; duty of registrar; effect of informal probate.

(a) Upon receipt of an application requesting informal probate of a will filed by a corporate fiduciary, by a parent, spouse, or reciprocal beneficiary of the decedent, or by a descendant of a parent of the decedent, the registrar, upon making the findings required by section 560:3-303, shall issue a written statement of informal probate appointing a personal representative subject to qualification and acceptance, if at least one hundred twenty hours have elapsed since the decedent's death.

(b) Upon receipt of an application requesting informal probate of a will filed by someone other than as enumerated in subsection (a), the registrar shall set a date which shall be the earliest by which the registrar will decide the application. On or after such date, upon making the findings required by section 560:3-303, the registrar shall issue a written statement of informal probate appointing a personal representative subject to qualification and acceptance if at least fourteen days have passed after the last mailing or other delivery of the advance notice required by section 560:3-306, if proof that such notice has been

given is filed with the registrar and if no petition for formal testacy proceedings has been filed.

(c) Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

[L 1996, c 288, pt of §1; am L 1997, c 244, §4 and c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:3, “Probate of Wills and Administration” (continued)]]
[[Part IV, “Formal Testacy and Appointment Proceedings”]]

§560:3-403

Formal testacy proceedings; notice of hearing on petition.

(a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 560:1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 560:3-204. The notice shall include the name and address of the applicant, the name and location of the court hearing the petition, and the date of the hearing.

(b) Notice shall be given to the following persons: the surviving spouse or reciprocal beneficiary, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the judicial circuit or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(c) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered or certified mail to the alleged decedent at the alleged decedent's last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

- (1) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;
- (2) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; or
- (3) By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[annotations:]]
Rules of Court

Notice, see Hawaii Probate Rules, part A(III); HPR rule 51.

Determination of death, see HPR rules 150, 152.

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:3, “Probate of Wills and Administration” (continued)]]
[[Part VII, “Duties and Powers of Personal Representatives”]]

§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 section 560:7-302. A personal representative is 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 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 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 section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, 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 do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent's death has 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 death.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:3-713

Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to the personal representative, the personal representative's spouse or reciprocal beneficiary, agent, or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

- (1) The will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) The transaction is approved by the court after notice to interested persons.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:3, “Probate of Wills and Administration” (continued)]]
[[Part IX, “Special Provisions Relating to Distribution”]]

§560:3-901

Successors' rights if no administration.

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

Devises may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, decedent's death, and their relationship to the decedent.

Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse or reciprocal beneficiary and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:3-902

Distribution; order in which assets appropriated; abatement.

(a) Except as provided in subsection (b) and except as may otherwise be provided in connection with the share of the surviving spouse or reciprocal beneficiary who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (1) Property not disposed of by the will;
- (2) Residuary devises;
- (3) General devises;
- (4) Specific devises.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:3-906

Distribution in kind; valuation; method.

(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

- (1) A specific devisee is entitled to distribution of the thing devised to that person, and a spouse, reciprocal beneficiary, or child who has selected particular assets of an estate as provided in section 560:2-402 shall receive the items selected;
- (2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind provided:
 - (A) The person entitled to the payment has not demanded payment in cash;
 - (B) The property distributed in kind is valued at fair market value as of the date of its distribution; and
 - (C) No residuary devisee has requested that the asset in question remain a part of the residue of the estate;
- (3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the

assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised;

(4) The residuary estate shall be distributed in any equitable manner.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:3-915

Distribution to person under disability.

(a) A personal representative may discharge the obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(b) Unless contrary to an express provision in the will, the personal representative may discharge the obligation to distribute to a minor or person under other disability as authorized by section 560:5-101 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(c) If the heir or devisee is under disability other than minority, the personal representative is 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 a year, or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value. Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of that person, but may 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 be preserved for future support of the disabled person. The personal

representative is not responsible for the proper application of money or property distributed pursuant to this subsection.
[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

§560:3-916

Apportionment of estate taxes.

(a) For purposes of this section:

"Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.

"Fiduciary" means personal representative or trustee.

"Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

"Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

"State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Tax" means the federal estate tax and the additional inheritance tax imposed by Hawaii and interest and penalties imposed in addition to the tax.

(b) Except as provided in subsection (i) and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this chapter, the method described in the will controls.

(c) (1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax;

- (2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable;
 - (3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest;
 - (4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter the determination of the court in respect thereto shall be prima facie correct.
- (d)
- (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to that person, the amount of tax attributable to that person's interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter;
 - (2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.
- (e)
- (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax;
 - (2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift

inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal;

- (3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment;
- (4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax;
- (5) To the extent that property passing to or in trust for a surviving spouse or reciprocal beneficiary or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person

required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

(i) If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax law, the liabilities imposed by the federal law will control and the balance of this section shall apply as if the resulting liabilities had been prescribed herein.

[L 1996, c 288, pt of §1; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:3, “Probate of Wills and Administration” (continued)]]
[[Part XII, “Collection of Personal Property by Affidavit and
Summary Administration Procedure for Small Estates”]]

§560:3-1212

Estates of persons leaving no known relatives.

Every coroner or medical examiner who is called to investigate the death of any person leaving no known spouse or reciprocal beneficiary, issue, parent, grandparent, or issue of grandparents over the age of majority in the State, shall take immediate charge of the decedent's personal effects and if in the discretion of the coroner the value of such personal effects is in excess of \$2,500, forthwith deliver them to the clerk of the court of the judicial circuit in which such decedent died.

If after ten days no person appears, competent to initiate appropriate probate proceedings, the clerk shall administer the estate pursuant to the provisions of this part; provided that if the decedent's estate is of a value exceeding \$60,000, the clerk shall notify the judge of the circuit having charge of the probate calendar, and shall petition for the appointment of a personal representative of such estate other than the clerk.

In the meantime the clerk may take such steps as may be appropriate to preserve and conserve the real and personal property of the decedent. All expenses in connection with the taking possession, care, and conservation of the property and with such proceedings shall be proper charges against the estate of the decedent.

The corporation counsel or county attorney of each county shall advise, assist, and represent as far as necessary any of such officers in the performance of any act or the institution or prosecution of any proceeding required by this section.

If the decedent's estate is of a value not exceeding \$2,500 and the decedent has no known relatives or whose relatives have failed to indicate any means of disposition of the estate, then the coroner or medical examiner having custody of the property shall dispose of the property in an appropriate manner, which may be any one of the following or a combination thereof:

- (1) Where the estate consists only of money and is not in excess of \$2,500 and expenditures have been made in connection with such death, to reimburse the appropriate city and/or county office that made the disbursement to defray said expenses;
- (2) Where the estate consists of cash or personal belongings of monetary value, or both, not exceeding \$2,500, to liquidate the personal belongings and apply the proceeds, together with the cash, if the total does not exceed \$2,500, in accordance with paragraph (1);
- (3) Where the assets in the estate are of no monetary value (unsalable) and in the best judgment and discretion of the coroner or medical examiner can be used by some charitable institution, to donate the assets to whatever charitable institution is willing and able to pick up the assets in question;
- (4) Where the assets have no value whatsoever or are in such condition that, in the best judgment and discretion of the coroner or medical examiner, a charitable institution cannot use the properties, or will not receive the properties, to destroy the same in any manner the coroner or medical examiner sees fit; and
- (5) If under paragraphs (1) and (2), there are assets remaining, then the coroner or medical examiner shall forthwith forward the same to the state director of finance for disposition as provided in chapter 523A.

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:5, “Protection of Persons Under Disability and
Their Property”]]
[[Part III, “Guardians of the Person of Incapacitated Persons”]]

§560:5-301

Testamentary nomination of guardian of the person for incapacitated person.

The parent or spouse or reciprocal beneficiary of an incapacitated person may by will nominate a guardian of the person of the incapacitated person. The family court shall give preference to any such nominee, but the court may appoint someone other than the testamentary nominee upon a showing of cause.

A testamentary nomination by a spouse or reciprocal beneficiary shall be preferred by the family court over a nomination by a parent.

[L 1976, c 200, pt of §1; am L 1997, c 383, §19]

§560:5-309

Notices in guardianship proceedings.

(a) In a proceeding for the appointment or removal of a guardian of the person of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of the time and place of hearing shall be given by the petitioner to each of the following:

- (1) The ward or the person concerning whom the proceeding has been commenced and the ward's or person's spouse or reciprocal beneficiary, legal parents, and adult children;
- (2) Any person who is serving as the guardian of the ward's or person's estate or who has care and custody of the ward or person;
- (3) In case no other person is notified under paragraph (1), at least one of the ward's or person's closest adult relatives, if any can be found; and
- (4) The office of the public guardian where the public guardian is being nominated as guardian of the person of an incapacitated person.

(b) Notice shall be served personally on the alleged incapacitated person, the person's spouse or reciprocal beneficiary, the person's legal parents, and the person's adult

children, if they can be found within the State. Notice to any of those who cannot be found within the State and to all other persons except the alleged incapacitated person shall be given as provided in section 560:1-401. For good cause, the court may waive notice to any person in subsection (a)(1) or (3), other than the ward, upon a showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest or concern in the subject. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the individual sent by the family court to interview the person. Except as provided in section 560:5-303, representation of the alleged incapacitated person by a guardian ad litem is not necessary.

(c) Grandparents shall be notified in all proceedings involving minors. For good cause, the court may waive notice to a grandparent upon a showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest or concern in the subject.

[L 1976, c 200, pt of §1; am L 1981, c 216, §1; am L 1983, c 124, §12; am L 1989, c 43, §1; am L 1997, c 383, §19; am L 1999, c 298, §1]

[[annotations:]]
Rules of Court

Notice, see HPR rules 104, 105.

§560:5-311

Who may be guardian of the person; priorities.

(a) The family court may appoint any competent person or any non-profit agency or corporation, public or private, as guardian of the person of an incapacitated person and in the selection thereof, the family court shall in all cases consider the best interests of the ward.

(b) Except as otherwise provided in section 560:5-301, persons who are not disqualified are entitled to consideration for appointment in the following order:

- (1) The spouse or reciprocal beneficiary of the incapacitated person, including a person nominated by will or other writing signed by a deceased spouse or reciprocal beneficiary;

- (2) An adult child of the incapacitated person;
- (3) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
- (4) Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition;
- (5) A person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person. The family court, for good cause, may pass over a person having priority and appoint a person having less or no priority.

[L 1976, c 200, pt of §1; am L 1981, c 92, §2; gen ch 1985; am L 1997, c 383, §19]

§560:5-312

General powers and duties of guardian of the person.

(a) A guardian of the person of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian of the person has the following powers and duties, except as modified by order of the family court:

- (1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the guardian's ward and may establish the ward's place of abode within or without this State.
- (2) If entitled to custody of the guardian's ward the guardian shall make provision for the care, comfort and maintenance of the guardian's ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the guardian's ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of the guardian's ward is in need of protection.

- (3) The guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.
- (4) If no guardian of the property of the ward has been appointed, the guardian may:
 - (i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform the person's duty;
 - (ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, the guardian may not use funds from the guardian's ward's estate for room and board which the guardian, the guardian's spouse or reciprocal beneficiary, parent, or child have furnished the ward unless a charge for the service is approved by order of the family court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian must exercise care to conserve any excess for the ward's needs.
- (5) The guardian shall report the condition of the guardian's ward and of the estate which has been subject to the guardian's possession or control, as required by the family court or family court rule.
- (6) If a guardian of the property has been appointed, all of the ward's estate received by the guardian of the person in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the guardian of the property for management as provided in this chapter, and the guardian of the person must account to the guardian of the property for funds expended.

(b) Any guardian of the person of one for whom a guardian of the property also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for the guardian of the person's services and for room and board furnished to the ward as agreed upon between the guardian of the person and the guardian of the property, provided the amounts agreed upon are reasonable under the circumstances. The guardian of the person may request the guardian of the property to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

[L 1976, c 200, pt of §1; gen ch 1985; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:5, “Protection of Persons Under Disability and
Their Property” (continued)]]
[[Part IV, “Protection of Property of Persons Under Disability and Minors”]]

§560:5-408

Permissible court orders.

The court has the following powers which may be exercised directly or through a guardian of the property in respect to the estate and affairs of protected persons:

- (1) While a petition for appointment of a guardian of the property or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents.
- (2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family and members of the minor's household.
- (3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, and subject to the limitations as to specified powers as contained in [paragraph] (4) below, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release the person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release the person's powers as trustee, personal representative, custodian for minors, guardian of the property, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the person's deceased spouse or reciprocal beneficiary

and to renounce any interest by testate or intestate succession or by inter vivos transfer.

- (4) The court may exercise or direct the exercise of, its authority to sell, mortgage, lease or otherwise encumber the real property of the protected person, to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty per cent of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after a hearing preceded by notice pursuant to section 560:1-401 to the persons entitled to notice under section 560:5-405, that it is in the best interests of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power.
- (5) An order made pursuant to this section determining that a basis for appointment of a guardian of the property or other protective order exists, has no effect on the capacity of the protected person.

[L 1976, c 200, pt of §1; gen ch 1985; am L 1997, c 383, §19]

§560:5-410

Who may be appointed guardian of the property; priorities.

(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as guardian of the property of a protected person, and, in the selection thereof, the court shall in all cases consider the best interests of the protected person. The following are entitled to consideration for appointment in the following order:

- (1) A guardian of the property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;
- (2) An individual or corporation nominated by the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
- (3) The spouse or reciprocal beneficiary of the protected person;
- (4) An adult child of the protected person;
- (5) A parent of the protected person, or a person nominated by the will of a deceased parent;

- (6) Any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition;
- (7) A person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (1), (3), (4), (5), or (6) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause may pass over a person having priority and appoint a person having less priority or no priority.

[L 1976, c 200, pt of §1; am L 1997, c 383, §19]

§560:5-422

Sale, encumbrance or transaction involving conflict of interest; court approval.

Any sale or encumbrance to a guardian of the property, the guardian's spouse or reciprocal beneficiary, agent or attorney, or any corporation or trust in which the guardian has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest must be approved by the court after notice to interested persons and others as directed by the court.

[L 1976, c 200, pt of §1; gen ch 1985; am L 1997, c 383, §19]

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:5, “Protection of Persons Under Disability and
Their Property” (continued)]]
[[Part VI, “Incapacitated Persons Sterilization Rights”]]

§560:5-601

Definitions.

As used in this Part:

"Adult" means an individual who has attained the age of eighteen years.

“Court” means any duly constituted court.

“Incapacitated person” means a person as defined in section 560:5-101(2).

“Informed assent” means a process by which a ward who lacks the legal capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks, and consequences of the procedure and, insofar as the ward is able to, indicates willingness and choice to undergo sterilization.

“Interested person” means an interested, responsible adult, including but not limited to a public official, the legal guardian, spouse or reciprocal beneficiary, parent, legal counsel, adult child, or next of kin of a person allegedly mentally ill, mentally deficient, or as otherwise provided in this chapter.

“Judge” means any judge of the family court or per diem judge appointed by the chief justice as provided in section 604-2.

“Licensed physician” means any person who is licensed to practice medicine in Hawaii under chapter 453 or 460.

“Records” include, but is not limited to, all written clinical information, observations and reports, or fiscal documents relating to a ward who has undergone or is about to undergo sterilization and which is related to the sterilization.

“Sterilization” means any medical or surgical operation or procedure which can be expected to result in a patient's permanent inability to reproduce.

“Ward” means an incapacitated person for whom a guardian of the person has been appointed and who, because of the terms of the appointment of the guardian, lacks the legal power to consent to sterilization.

[L 1986, c 81, pt of §2; am L 1989, c 130, §3; am L 1997, c 383, §19]

[[annotations:]]
Revision Note

In definition of judge, "604-2" substituted for "604-1".

[[Chapter 560, “Uniform Probate Code” (continued)]]
[[Sub-Chapter (Article) 560:6, “Nonprobate Transfers”]]
[[Part I, “Multiple-Party Accounts”]]

§560:6-107
Rights against multiple-party accounts.

A transfer to a survivor of a multiple-party account can be set aside, to the extent described below, in the event the assets in the hands of the personal representative of the deceased party are insufficient to pay taxes, expenses of administration, and homestead and family allowances under sections 560:2-402 and 560:2-404.

A surviving party, payable-on-death payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party may, on application of the personal representative of the deceased party's estate, the surviving spouse or reciprocal beneficiary of the deceased party, or one acting for a dependent or minor child of the deceased party, be required to account to said personal representative for the deceased party's net contribution to the account to the extent necessary to discharge the insufficiency described above.

No proceeding to assert this right shall be commenced later than two years following the death of the deceased party.

Sums recovered hereunder shall be administered as part of the decedent's estate.

This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment either the institution has been served with process in a proceeding by the personal representative or the institution has actual knowledge that making payment will jeopardize the payment of the taxes, expenses and allowances above mentioned.

[L 1976, c 200, pt of §1; am L 1977, c 144, §51; am L 1996, c 288, §4; am L 1997, c 383, §19]

[[Note: Chapter 572C falls under the broad category of laws known as Title 31, "Family"]]

[[CHAPTER 572C, "Reciprocal Beneficiaries"]]

[§572C-1]

Purpose.

The purpose of this chapter is to extend certain rights and benefits which are presently available only to married couples to couples composed of two individuals who are legally prohibited from marrying under state law.

[L 1997, c 383, pt of §1]

[§572C-2]

Findings.

The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman.

The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.

However, the legislature concurrently acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by such legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son, or two individuals who are of the same gender.

Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another.

[L 1997, c 383, pt of §1]

[§572C-3]

Definitions.

For the purposes of this chapter:

"Declaration of reciprocal beneficiary relationship" means a statement in a form issued by the director that declares the intent of two people to enter into a relationship. By signing it, two people swear under penalty of perjury that they meet the requirements for a valid reciprocal beneficiary relationship.

"Director" means the director of health.

"Reciprocal beneficiaries" means two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship as defined in section 572C-4.

[L 1997, c 383, pt of §1]

[§572C-4]

Requisites of a valid reciprocal beneficiary relationship.

In order to enter into a valid reciprocal beneficiary relationship, it shall be necessary that:

- (1) Each of the parties be at least eighteen years old;
- (2) Neither of the parties be married nor a party to another reciprocal beneficiary relationship;
- (3) The parties be legally prohibited from marrying one another under chapter 572;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) Each of the parties sign a declaration of reciprocal beneficiary relationship as provided in section 572C-5.

[L 1997, c 383, pt of §1]

[§572C-5]

Registration as reciprocal beneficiaries; filing fees; records.

(a) Two persons, who meet the criteria set out in section 572C-4, may enter into a reciprocal beneficiary relationship and register their relationship as reciprocal beneficiaries by filing a signed notarized declaration of reciprocal beneficiary relationship with the director. For the filing of the declaration, the director shall collect a fee of \$8, which shall be remitted to the director of finance for deposit into the general fund.

(b) Upon the payment of the fee, the director shall register the declaration and provide a certificate of reciprocal beneficiary relationship to each party named on the declaration. The director shall maintain a record of each declaration of reciprocal beneficiary relationship filed with or issued by the director.

[L 1997, c 383, pt of §1]

[§572C-6]

Rights and obligations.

Upon the issuance of a certificate of reciprocal beneficiary relationship, the parties named in the certificate shall be entitled to those rights and obligations provided by the law to reciprocal beneficiaries.

Unless otherwise expressly provided by law, reciprocal beneficiaries shall not have the same rights and obligations under the law that are conferred through marriage under chapter 572.

[L 1997, c 383, pt of §1]

[§572C-7]

Termination of reciprocal beneficiary relationship; filing fees and records; termination upon marriage.

(a) Either party to a reciprocal beneficiary relationship may terminate the relationship by filing a signed notarized declaration of termination of reciprocal beneficiary relationship by either of the reciprocal beneficiaries with the director. For the filing of the declaration, the director shall collect a fee of \$8, which shall be remitted to the director of finance for deposit into the general fund.

(b) Upon the payment of the fee, the director shall file the declaration and issue a certificate of termination of reciprocal beneficiary relationship to each party of the former relationship. The director shall maintain a record of each declaration and certificate of termination of reciprocal beneficiary relationship filed with or issued by the director.

(c) Any marriage license subsequently issued by the department to any individual registered as a reciprocal beneficiary shall automatically terminate the individual's existing reciprocal beneficiary relationship.

(d) If either party to a reciprocal beneficiary relationship enters into a legal marriage, the parties shall no longer have a reciprocal beneficiary relationship and shall no longer be entitled to the rights and benefits of reciprocal beneficiaries.

[L 1997, c 383, pt of §1]

[[Chapter 586, “Domestic Abuse Protective Orders”]]

§586-1

Definitions.

As used in this chapter:

"Domestic abuse" means:

- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members; or
- (2) Any act which would constitute an offense under section 709-906, or under part V or VI of chapter 707 committed against a minor family or household member by an adult family or household member.

"Extreme psychological abuse" means an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress.

"Malicious property damage" means an intentional or knowing damage to the property of another, without his consent, with an intent to thereby cause emotional distress.

"Family or household member" means spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

[L 1982, c 123, pt of §2; am L 1987, c 359, §2; am L 1997, c 383, §64; am L 1998, c 172, §1]

[[Chapter 632, "Declaratory Judgments"]]

[[No part of this Chapter directly mentions reciprocal beneficiaries, nor was the Chapter mentioned in the group of laws passed in 1997 establishing reciprocal-beneficiary rights and benefits. The Chapter deals with granting the right to certain courts to make certain judgments. The annotation to the cover page of the Chapter says the following:]]

[[annotations:]]

Attorney General Opinions

To the extent that the reciprocal beneficiaries act [L 1997, c 383] does impose obligations on insurers, it may provide a basis for affected persons to seek relief by, for example, seeking declaratory relief under this chapter. Att. Gen. Op. 97-10.

[[Chapter 663, “Tort Actions”]]
[[Part I, “Liability; Survival of Actions”]]

§663-1

Torts, who may sue and for what.

Except as otherwise provided, all persons residing or being in the State shall be personally responsible in damages, for trespass or injury, whether direct or consequential, to the person or property of others, or to their spouses or reciprocal beneficiaries, children under majority, or wards, by such offending party, or the offending party's child under majority, or by the offending party's command, or by the offending party's animals, domestic or wild; and the party aggrieved may prosecute therefor in the proper courts.

[CC 1859, §1125; RL 1925, §2365; RL 1935, §4049; RL 1945, §10485; RL 1955, §246-1; HRS §663-1; am L 1972, c 144, §2(a) and c 189, §1; gen ch 1985; am L 1997, c 383, §65]

[[Note: the annotations for this seemingly short Section are quite long. “Torts” are wrongs committed by one party against another, and so are the basis for a great many lawsuits. Because of the 1997 package of laws concerning reciprocal beneficiaries, couples are drawn into this arena under the terms above, and so all annotations are included below for that Section. Note that Section 663-3, below but based on the Section above, allows for “Wrongful Death Complaints” and benefits, an important right and benefit granted to reciprocal beneficiary couples.]]

[[annotations:]]

Cross References

Guardian ad litem, see §551-2.

Natural guardian; liability for torts of child, see §577-3.

Suits by and against, see §572-28.

Rules of Court

Guardian ad litem, see HRCP rule 17(c); DCRCP rule 17(c).

Affirmative defenses, see HRCP rule 8(c); DCRCP rule 8(c).

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Negligent Infliction of Emotional Harm. 7 HBJ 148.

Apportionment of Personal Injury Damages and Expert Medical Opinion in Hawaii. 8 HBJ 25.

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Sexual Harassment in the Workplace: Remedies Available to Victims in Hawaii. 15 UH L. Rev. 453.

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Seller Beware: New Law Protects Hawai`i Home Buyers. 18 UH L. Rev. 981.

BMW v. Gore: Curbing Excessive Punitive Damages. 19 UH L. Rev. 311.

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Interspousal Torts: A Procedural Framework for Hawai`i. 19 UH L. Rev. 377.

The Best Place, Inc. v. Penn America Insurance Company: Hawai`i Bad Faith Cause of Action for Insurer Misconduct. 19 UH L. Rev. 845.

Cyberprivacy on the Corporate Intranet: Does the Law Allow Private-Sector Employers to Read Their Employees' E-mail? 20 UH L. Rev. 165.

The Misappropriation Doctrine in Cyberspace: Protecting the Commercial Value of "Hot News" Information. 20 UH L. Rev. 421.

Case Notes

Where plaintiffs argued that State waived its Eleventh Amendment immunity through the enactment of §353-14 and the State's Tort Claims Act [sic], §662-2 and this section, no express consent or applicable waiver provisions found. 940 F. Supp. 1523.

Children. Parent liable for tort of minor child when child would be liable. 15 H. 124; 23 H. 541, 543.

Father not liable for act of infant unemancipated from childish instincts. 8 H. 715.

Liability of infant for damages to hired chattel resulting from infant's immoderate use of the chattel. 8 H. 237.

Contributory negligence of mother of six-year old child not imputed to child. 29 H. 604. See 47 H. 281, 287, 386 P.2d 872.

Degree of care toward children on highway. 40 H. 417.

Child has no cause of action for injuries to parent not resulting in death. 41 H. 634; 244 F.2d 604.

A six-year old may be capable of contributory negligence; minor's standard of care. 47 H. 281, 386 P.2d 872.

Minor children liable in tort to parents, when. 51 H. 74, 450 P.2d 998.

Minor children may sue their parents for negligence. 51 H. 484, 462 P.2d 1007.

Negligence; standard of care for children. 54 H. 611, 513 P.2d 487.

Parent may recover damages for loss of filial consortium of an injured adult child. 71 H. 1, 780 P.2d 566.

Causation. Intervening negligence and proximate causation. 45 H. 128, 363 P.2d 969.

Negligence. Causation construed. 57 H. 460, 558 P.2d 1018.

Where causation is a primary issue, it is plain and reversible error for a trial court not to explain the meaning of "legal cause" to a jury. 77 H. 282, 884 P.2d 345.

When read as a whole, or when considering both jury instruction where trial court used term "legal cause" as opposed to "substantial factor" and instruction that properly defined "legal cause", the instructions given were not prejudicially insufficient, erroneous, inconsistent, or misleading. 78 H. 230, 891 P.2d 1022.

In breach of express warranty actions based on seller's failure to deliver goods in conformance with an express promise, affirmation of fact, or description, "substantial factor" test proper standard to apply in determining proximate cause. 86 H. 383 (App.), 949 P.2d 1004.

Damages. Defendant insurance company's motion for summary judgment granted as to plaintiff's claim for punitive damages, where plaintiff alleged that defendant's conduct was wanton and oppressive; there was not sufficient evidence to reach clear and convincing standard, and thus the question of punitives could not be put to a jury. 999 F. Supp. 1369.

If plaintiff succeeded on bad faith claim, and plaintiff could show that plaintiff's emotional distress damages were proximately caused by defendant insurance company's actions, plaintiff could recover damages for plaintiff's emotional distress as incidentally flowing from the breach. 999 F. Supp. 1369.

Where court construed plaintiff's claim as one for tortious breach of contract, as court could not identify a breach of contract, it necessarily followed that there was no material issue of fact whether defendant's alleged breach of contract was sufficiently "wanton or reckless" to justify recovery for tortious breach. 11 F. Supp. 2d 1204.

Punitive damages not allowed against principal unless principal participated in the wrongful act or authorized or approved it. 8 H. 411; 24 H. 579; 29 H. 524.

Punitive damages may be awarded though actual damages nominal. 40 H. 492.

Explosives, concussion damage. 42 H. 353.

Use of mathematical formula to compute damages for pain and suffering improper. 47 H. 408, 390 P.2d 740; 48 H. 22, 395 P.2d 365. But see §635-52.

Defendant title company was liable to plaintiffs only for damages limited to the transaction for which certificate of title search was intended to influence, that is, only for damages plaintiffs suffered in the transaction wherein they purchased the property; defendant's negligence was not the proximate cause of the loss of anticipated profits. 51 H. 462, 462 P.2d 905.

Clear and convincing standard of proof adopted for all punitive damage claims. 71 H. 1, 780 P.2d 566.

Punitive damages may be awarded in products liability action based on underlying theory of strict liability where plaintiff proves requisite aggravating conduct on part of defendant. 71 H. 1, 780 P.2d 566.

Plaintiff has duty to mitigate damages. 56 H. 507, 542 P.2d 1265.

Mental distress damages may be recovered in a products liability implied warranty action. 74 H. 1, 837 P.2d 1273.

Apportionment of damages, discussed, where plaintiff had a pre-existing condition, had been injured or plaintiff's condition had been aggravated by independent acts of successive tortfeasors, and had allegedly caused some of plaintiff's own injuries after the accident from which plaintiff had brought suit. 77 H. 282, 884 P.2d 345.

Circuit court correctly granted plaintiff-appellee's motion for directed verdict as to punitive damages regarding interference with contract claim, where defendants-appellants failed to show actual damages. 78 H. 40, 890 P.2d 277.

Punitive damages may not be awarded in bad faith tort case unless evidence reflects something more than the conduct necessary to establish the tort. 82 H. 120, 920 P.2d 334.

Emotional distress damages resulting from breach of contract recoverable only where parties specifically provide for them in the contract or where the nature of the contract

clearly indicates that such damages are within the parties' contemplation or expectation in the event of a breach. 89 H. 234, 971 P.2d 707.

Tort recovery, including recovery of punitive damages, is not allowed under Hawaii law for breach of contract in the absence of conduct that

- (1) violates a duty that is independently recognized by principles of tort law and
- (2) transcends the breach of the contract.

89 H. 234, 971 P.2d 707.

Where plaintiff alleging defamation failed to prove "actual damages" caused by newspaper's negligence, summary judgment for newspaper properly granted. 89 H. 254, 971 P.2d 1089.

Inconsistent for jury not to award pain and suffering general damages where it awarded special damages for medical expenses and lost wages. 80 H. 188 (App.), 907 P.2d 774.

"Pure" comparative negligence principles should be applied to reduce a plaintiff's recovery in those tort actions for breach of express warranty where a plaintiff is found to be negligent. 86 H. 383 (App.), 949 P.2d 1004.

Defamation. Defendants' statements implying attorney's poor client representation constitutionally protected speech and not defamatory where general and specific contexts in which statements were made did not imply assertion of an objective fact and statements were incapable of being proved true or false. 56 F.3d 1147.

False statement that attorney had been a prosecutor in South Africa was libelous per se; no recovery for defamation based on a truthful statement of fact. 825 F. Supp. 906.

Some statements that allegedly defamed plaintiff or cast plaintiff in false light were privileged expressions of opinion. 825 F. Supp. 906.

Plaintiff was not a public figure for purposes of its defamation claim. 833 F. Supp. 802.

Statements in editorial about plaintiff (when plaintiff was mayor) were protected by First Amendment and thus, not actionable. 930 F. Supp. 1403.

Where alleged defamatory statements occurred during a conversation between an employee of defendant and representatives of defendant's temporary disability insurer, there was a qualified privilege as defendant and its insurer shared a common interest, their business relationship; an employer who communicates information to its insurance carrier is acting,

at the very least, to promote the private interest of the companies; questions remained regarding potential abuse of the privilege. 26 F. Supp. 2d 1241.

Public official. 50 H. 648, 448 P.2d 337.

Qualified privilege; publication. 52 H. 366, 477 P.2d 162.

Libel per se; qualified privilege. 53 H. 456, 497 P.2d 40.

Broadcast charging falsely that person is communist is libel per se. 56 H. 522, 543 P.2d 1356.

Qualified privilege discussed. 57 H. 390, 557 P.2d 1334.

Trial court clearly erred, to defendant's prejudice, by leaving to jury determination of existence of a qualified privilege. 76 H. 310, 876 P.2d 1278.

Defendant's statement not false or defamatory where statement was rhetorical hyperbole--figurative or hyperbolic language that would negate the impression that defendant was asserting an objective fact about plaintiff; statement thus was constitutionally protected. 88 H. 94, 962 P.2d 353.

Where plaintiff in defamation action failed to prove that newspaper had acted with actual malice when it erroneously published story naming plaintiff as the target of an investigation, summary judgment for newspaper properly granted. 89 H. 254, 971 P.2d 1089.

Defenses. Fact that manufacturers of blood clotting agent followed industry standards in negligence action by hemophiliac patients who tested positive for HIV did not necessarily immunize defendants from liability. 971 F.2d 375.

Where defendant contended that claim for breach of implied covenant of good faith and fair dealing was barred by two-year statute of limitations governing damage to persons and property (§657-7), since there is no element in the cause of action for bad faith that requires a plaintiff to suffer personal injury, it is not in reality a cause of action based upon a "personal injury", and the applicable statute of limitations is six years and is found in the catchall provision of §657-1 (§657-1(4)). 986 F. Supp. 1334.

It could not be disputed that by the time the underinsured motorist benefits were paid, plaintiff either knew or should have known that defendant's alleged refusal to engage in settlement negotiations caused plaintiff injury; any claims for emotional distress were time-barred. 11 F. Supp. 2d 1204.

Limitations period applicable to cause of action for bad faith, discussed; where complaint was not filed until almost one year after the limitations period had lapsed, to the extent that complaint alleged a claim for the tort of bad faith denial of benefits, summary judgment granted in favor of defendant as to plaintiff's claim for tort of bad faith. 11 F. Supp. 2d 1204.

Contributory negligence. 48 H. 22, 395 P.2d 365.

Assumption of risk. 49 H. 1, 406 P.2d 887; 49 H. 351, 417 P.2d 816.

Unavoidable accident. 47 H. 408, 390 P.2d 740; 48 H. 330, 402 P.2d 289.

Comparative negligence applies only to claims accruing after July 14, 1969, and the rule of contributory negligence continues on claims that accrued before that date. 52 H. 129, 471 P.2d 524.

Interspousal tort immunity upheld. 63 H. 653, 634 P.2d 586.

In implied warranty and strict products liability tort actions, express assumption of risk is available as separate defense that may bar recovery; implied assumption of risk is defense only when plaintiff's assumption of risk is a form of contributory negligence. 74 H. 1, 837 P.2d 1273.

Assumption of risk defense generally applied to tort claims for relief. 74 H. 85, 839 P.2d 10.

UCC statute of limitations applies to breach of express warranty claim for personal injury. 86 H. 383 (App.), 949 P.2d 1004.

Dram shop. Person injured by intoxicated person may recover from tavern which supplied liquor to the intoxicated person in violation of statute. 62 H. 131, 612 P.2d 533.

Duty. Plaintiff failed to demonstrate facts to establish duty owed by defendant, where, inter alia, no evidence found of custody or control of plaintiff's employer's machinery or employees that would create special relationship between defendant and plaintiff's employer or plaintiff. 863 F. Supp. 1193.

In case arising out of alleged assault on airplane, tort claim for breach of duty of reasonable care preempted by Airlines Deregulation Act. 905 F. Supp. 823.

Evidence demonstrated that plaintiffs had never had a relationship with defendant; without a relationship between plaintiffs and defendant, there could be no legal duty. 920 F. Supp. 1080.

Defendant did not owe plaintiffs a duty to deny doctor hospital privileges, where defendant could not reasonably foresee that plaintiff would be injured as a result of doctor's performance of plaintiff's hip revision surgery. 985 F. Supp. 1241.

Where plaintiffs asserted cause of action against defendant for negligent supervision, contending that based on defendant's knowledge of doctor's prior substance abuse, defendant had a duty to supervise doctor's surgical procedures, defendant did not have a duty to specifically supervise doctor's surgical procedures, as opposed to any other physician on its medical staff. 985 F. Supp. 1241.

Defendant, which acted as custodian, granted summary judgment on counts where plaintiff alleged that defendant acted in a negligent or grossly negligent manner by permitting securities to be substituted into custodial account and by releasing cash as alleged. 30 F. Supp. 2d 1255.

Liability not extended to non-commercial suppliers of alcoholic beverages, i.e., the social host. 71 H. 229, 788 P.2d 159.

No finding of negligence where defendants had no duty to protect plaintiff from criminal acts of third person. 73 H. 158, 829 P.2d 512.

Publisher of work of general circulation that neither authored nor guaranteed the contents of its publication had no duty to warn public of accuracy of contents of its publication. 73 H. 359, 833 P.2d 70.

Trial court correctly refused to recognize new tort duty on part of motorcyclists to wear protective headgear. 74 H. 308, 844 P.2d 670.

Section 281-78(a)(2)(A) (1989) imposes a duty to innocent third parties upon a liquor licensee who sells alcohol to a minor; the duty includes the situation where an innocent third party has been injured by an intoxicated minor other than the minor to whom the liquor was sold, subject to determinations by the trier of fact on the issue of reasonable foreseeability. 76 H. 137, 870 P.2d 1281.

Circuit court erred in granting defendants' motion for summary judgment where plaintiff was a business visitor of hotel and there was a genuine issue of material fact regarding issue of reasonable foreseeability. 79 H. 110, 899 P.2d 393.

Insurer has legal duty, implied in first-and third-party insurance contracts, to act in good faith in dealing with insured; breach of that duty gives rise to independent tort cause of action. 82 H. 120, 920 P.2d 334.

Plaintiff's allegations stated a claim that potentially could warrant relief under a theory based on duty by defendant wife to refrain from conduct that would create an unreasonable risk of harm to another through husband's conduct. 82 H. 293, 922 P.2d 347.

Where deceased was not in the custody of defendant, a special relationship did not exist to impose a duty on defendant to prevent deceased's suicide. 83 H. 154, 925 P.2d 324.

Manufacturer not negligent in failing to warn of "blind zone" danger where danger involved in using straddle carrier was obvious and apparent, discernible by casual inspection, and generally known and recognized. 85 H. 336, 944 P.2d 1279.

Manufacturers are not subject in Hawaii to an independent, continuing duty to retrofit its products, subsequent to their manufacture and sale, with post-manufacture safety devices that were unavailable at the time of manufacture. 85 H. 336, 944 P.2d 1279.

No duty by insurance agent to advise insured of option to stack coverage where no evidence agent had informed insureds in the past of changes in insurance laws such that insured would rely on agent to inform them of changes in available coverage without their inquiry. 87 H. 307, 955 P.2d 100.

As dangers of riding unrestrained in open cargo bed of pickup truck are obvious and generally known to ordinary user, truck manufacturer had no duty to warn potential passengers of those dangers. 87 H. 413, 958 P.2d 535.

Hawaii civil rights commission is subject to a duty to follow its own administrative rules, utilizing reasonable care, and was potentially negligent for instituting legal action barred by its own administrative rules. 88 H. 85, 962 P.2d 344.

Where police department did not have "special relationship" with victim, department did not have duty to protect victim or victim's parents from harm caused by assailant. 89 H. 315, 972 P.2d 1081.

Non-liquor licensee social host does not have non-statutory tort law duty to protect third persons from risks of personal injury and/or property damage caused when certain events occur in certain sequence. 9 H. App. 490, 851 P.2d 332.

Because of the obvious danger to young children, it was unreasonable to require that swimming pool manufacturer furnish labels with its pools warning of that danger; swimming pool manufacturer's duty to put a safe product on the market includes duty to take such measures in manufacturing and marketing the pool as will reasonably protect against injury to young children arising from their use of the pool. 10 H. App. 547, 879 P.2d 572.

An accountant may be held liable to third parties under §552(2) of Restatement of Torts for negligence in the preparation of an audit report. 86 H. 301 (App.), 949 P.2d 141.

Government. State which holds open a public thoroughfare for travel has duty to maintain it in condition safe for travel. 50 H. 497, 443 P.2d 142.

A nonjudicial government officer has no immunity from suit and is liable if officer was motivated by malice and not by an otherwise proper purpose. 55 H. 499, 522 P.2d 1269.

A public official can be held liable for damages for the malicious exercise of discretion. 2 H. App. 176, 628 P.2d 634.

Nonjudicial government official can be held liable for general, special, and punitive damages if official maliciously exercised official discretion or maliciously committed a tort. 2 H. App. 221, 629 P.2d 635.

Landowner. Liability of wife who is joint owner of land with husband for collapse of retaining wall. 47 H. 149, 384 P.2d 303.

Occupier of land has duty to use reasonable care for the safety of all persons reasonably anticipated to be on premises, regardless of status of individual. 51 H. 134, 452 P.2d 445; 51 H. 299, 459 P.2d 198.

Liability of landowner for injuries caused by landowner's dog to trespassers discussed. 57 H. 620, 562 P.2d 779.

Occupier of land--extent of duty to warn of dangers on premises. 60 H. 32, 586 P.2d 1037.

If a condition exists upon land which poses an unreasonable risk of harm to persons using the land, then the possessor of the land, if the possessor knows, or should have known of the unreasonable risk, owes a duty to persons using the land to take reasonable steps to eliminate the unreasonable risk, or adequately to warn users against it. 70 H. 415, 772 P.2d 693.

Where plaintiff was injured on motocross track, an area of raceway park not thrown open for admission of the public, Restatement (Second) of Torts §359 could not be a basis for lessor's liability; lessor not liable under Restatement (Second) of Torts §358, where plaintiffs failed to adduce any facts demonstrating that lessees or sublessees did not know or have reason to know track's lighting was dangerously inadequate. 76 H. 77, 869 P.2d 216.

Continuing-tort exception, which tolls running of statute of limitations under §662-4, adopted; thus, where an actor continuously diverts water over which he or she has direct

control onto another's land, and the diversion causes continuous and substantial damage to that person's property and the actor knows of this damage, such an act may present evidence of a continuous tort. 88 H. 241 (App.), 965 P.2d 783.

To recover in negligence, it must be shown that owner or occupant of premises knew or should have known of the hazard causing the injuries. 1 H. App. 554, 623 P.2d 446.

Malicious prosecution. Summary judgment granted in favor of defendants on plaintiff's malicious prosecution claim, where defendant police officer and defendant resident manager had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167. 5 H. 609; 6 H. 300; 7 H. 346; 7 H. 569; 10 H. 588; 43 H. 321; 49 H. 416, 421 P.2d 289; 2 H. App. 316, 631 P.2d 600.

In actions for malicious prosecution and false imprisonment, district court conviction conclusively establishes probable cause even if conviction is reversed. 56 H. 383, 538 P.2d 320.

Appellants' state tort claims for false arrest, false imprisonment, and malicious prosecution failed as a matter of law because appellants did not contest the preliminary hearing determination of probable cause and their commitment to circuit court for trial. Appellants failed to cite to any persuasive or relevant authority in support of their contention that where actions or inactions of the prosecutor subsequent to a preliminary hearing "erodes" probable cause, an action for false arrest, false imprisonment, or malicious prosecution arises. 76 H. 219, 873 P.2d 98.

Malpractice. See 43 H. 289.

Physician and surgeon; doctrine of informed consent; duty of physician to make full disclosure. 52 H. 188, 473 P.2d 116.

Manufacturer's package insert, in and of itself, may not establish the relevant standard of care in a medical negligence action. 78 H. 287, 893 P.2d 138.

The question of part (b) causation in an action based on doctrine of informed consent is to be judged by an objective standard, that is, whether a reasonable person in plaintiff-patient's position would have consented to the treatment that led to his or her injuries had plaintiff-patient been properly informed of the risk of the injury that befell him or her. 79 H. 362, 903 P.2d 667.

A consulting physician does not owe a duty to a patient to warn of the inherent risks of a proposed treatment or surgery; however, a physician tendering a second opinion has an obligation to inform a patient of the nature of the proposed treatment or surgery, its risks, and alternatives. 87 H. 183, 953 P.2d 561.

Court erred in holding that plaintiff was required to prove by expert testimony that a dentist owes a duty to disclose the risks or potential complications of surgery. 87 H. 183, 953 P.2d 561.

Where physician retained degree of participation in treatment, by way of control, consultation and otherwise, physician had continuing responsibility to properly advise patient of the risks and alternatives to the proposed surgery. 87 H. 183, 953 P.2d 561.

Attorney representing a client may be personally liable to an adverse party or a third person as a result of attorney's intentional tortious act. 1 H. App. 379, 620 P.2d 733.

Master and servant. Negligence claim against employer for failure to conduct adequate investigation of misconduct allegation against employee preempted by Labor Management Relations Act. 817 F. Supp. 850.

In action arising out of citizen's arrest of plaintiff by defendant resident manager, summary judgment granted in favor of defendant association of apartment owners on both negligent employment and supervision causes of action where plaintiff presented no evidence that defendant association knew or had any reason to know that defendant resident manager posed a threat to plaintiff. 855 F. Supp. 1167.

Where plaintiffs asserted cause of action against defendant for negligent supervision, contending that based on defendant's knowledge of doctor's prior substance abuse, defendant had a duty to supervise doctor's surgical procedures, defendant did not have a duty to specifically supervise doctor's surgical procedures, as opposed to any other physician on its medical staff. 985 F. Supp. 1241.

Discussion of master-servant relationship. 8 H. 168.

Master liable for servants' negligence. 3 H. 170; 29 H. 604; 30 H. 17; see 32 H. 246, aff'd 66 F.2d 929; 30 H. 452.

Employer's liability for false imprisonment. 8 H. 411.

Employer not liable for tort of employee committed while driving car furnished by employer for employee's personal use and so used. 32 H. 246, aff'd 66 F.2d 929.

Detour of 400 feet from route by servant does not necessarily relieve master from liability. 30 H. 457.

Administrator personally liable for negligence of servant even though committed within scope of estate's business. 11 H. 557.

Master's liability for theft by employee. 50 H. 477, 442 P.2d 460.

Various bases for holding employer liable for torts of employee discussed. 50 H. 628, 446 P.2d 821.

Liability of employer for negligence of employees hired out to third persons; doctrine of loaned servant. 52 H. 379, 477 P.2d 611.

Where statutory employer secured workers' compensation coverage as required under chapter 386 by paying a fee for that purpose to the lending employer, and employee received a statutory award for work-connected injuries, statutory employer was entitled to tort immunity. 88 H. 140, 963 P.2d 349.

Hawaii law does not recognize tortious breach of contract actions in the employment context. 89 H. 234, 971 P.2d 707.

Evidence did not support conclusion that employment relationship existed between defendants; even if employment relationship existed, defendant was not acting in scope of employment. 10 H. App. 298, 869 P.2d 1352.

Mental distress. Summary judgment granted in favor of defendants on plaintiff's intentional and negligent infliction of emotional distress claims in action arising out of citizen's arrest of plaintiff. 855 F. Supp. 1167.

Defendant's comments, while certainly distasteful, did not rise to level of outrageousness necessary to maintain intentional infliction of emotional distress claim. 866 F. Supp. 1285.

Because plaintiffs did not allege physical injury, there could be no recovery for negligent infliction of emotional distress claim; allegations about defendants' acts fell within meaning of outrageous conduct regarding intentional infliction of emotional distress claim. 895 F. Supp. 1365.

Where damage alleged by plaintiffs was to an expectancy in a life insurance contract, such damage did not qualify as sufficient to give rise to cause of action for negligent infliction of emotional distress; intentional infliction of emotional distress claim dismissed where alleged conduct did not qualify as "outrageous" under Hawaii law. 900 F. Supp. 1339.

Intentional infliction of emotional distress claim rejected, where editorial about plaintiff (when plaintiff was mayor) contained no false factual assertions and "actual malice" could not be established. 930 F. Supp. 1403.

If plaintiff succeeded on bad faith claim, and plaintiff could show that plaintiff's emotional distress damages were proximately caused by defendant insurance company's actions,

plaintiff could recover damages for plaintiff's emotional distress as incidentally flowing from the breach. 999 F. Supp. 1369.

Plaintiffs' claims for intentional infliction of emotional distress not barred by Hawaii's Workers' Compensation Act; plaintiffs' claims for negligent infliction of emotional distress barred by the Act. Defendant's motion for summary judgment granted with respect to plaintiffs' claims for negligent and/or intentional infliction of emotional distress, where, inter alia, plaintiffs had not alleged sufficient conduct by defendant to establish a claim for emotional distress. 2 F. Supp. 2d 1295.

It could not be disputed that by the time the underinsured motorist benefits were paid, plaintiff either knew or should have known that defendant's alleged refusal to engage in settlement negotiations caused plaintiff injury; any claims for emotional distress were time-barred. 11 F. Supp. 2d 1204.

Infliction of mental suffering. 39 H. 370.

Negligent infliction of mental distress, actionable when. 52 H. 156, 472 P.2d 509; 55 H. 398, 520 P.2d 758.

Negligent infliction of mental distress: plaintiff must be within reasonable distance of scene of accident. 56 H. 204, 532 P.2d 673.

Damages for emotional distress may be recoverable where there is wanton and reckless breach of contract. 62 H. 594, 618 P.2d 283.

Negligent v. intentional infliction of emotional distress. 64 H. 464, 643 P.2d 532.

Trial court did not err in awarding damages for emotional distress to parents, where appellants claimed parents not entitled to recover damages for emotional distress because they were not present at scene of son's accident and did not suffer any physical manifestations of emotional distress. 71 H. 1, 780 P.2d 566.

Mental distress damages may be recovered in a products liability implied warranty action. 74 H. 1, 837 P.2d 1273.

Jury instruction concerning negligent infliction of emotional distress should contain the requirement of physical injury to a person, if plaintiff was able to demonstrate such injury. 76 H. 310, 876 P.2d 1278.

Because plaintiff failed to adduce any evidence that defendant acted unreasonably in the course of discharging plaintiff, plaintiff's claim for intentional infliction of emotional distress was properly dismissed on summary judgment; circuit court properly entered summary judgment in favor of defendant on plaintiff's negligent infliction of emotional

distress claim, where plaintiff presented no evidence of any physical injury to plaintiff or anyone else. 76 H. 454, 879 P.2d 1037.

Defendant father's statement to sister of childhood sexual abuse victim defendant allegedly abused was not so unreasonable or outrageous as to give rise to cause of action by victim for intentional infliction of emotional distress. 83 H. 28, 924 P.2d 196.

Negligent infliction of emotional distress claim denied where plaintiffs failed to furnish evidence of greater mental stress than transient "concern", "worry", and "upset". 85 H. 336, 944 P.2d 1279.

Claim for negligent and/or intentional infliction of emotional distress against Hawaii civil rights commission not barred under §662-15(1), as acts of investigating complaint, instituting suit based on finding of reasonable cause, and sending demand letter were part of routine operations of commission and did not involve broad policy considerations encompassed within the discretionary function exception. 88 H. 85, 962 P.2d 344.

No intentional infliction of emotional distress as commission's act of sending official letter to settle complaint if appellant paid monetary damages and took out newspaper ad not "outrageous". 88 H. 85, 962 P.2d 344.

Where appellant's counterclaim lacked any allegation of physical injury to appellant or another as a result of the conduct of the Hawaii civil rights commission, action for negligent infliction of emotional distress could not be maintained. 88 H. 85, 962 P.2d 344.

Emotional distress damages resulting from breach of contract recoverable only where parties specifically provide for them in the contract or where the nature of the contract clearly indicates that such damages are within the parties' contemplation or expectation in the event of a breach. 89 H. 234, 971 P.2d 707.

Emotional distress for failure to make payments on time under a real estate sale contract. 2 H. App. 188, 628 P.2d 214.

Record did not support a finding that defendants wantonly and recklessly breached sub-agreement of sale so as to be liable to plaintiffs for emotional distress damages. 10 H. App. 461, 878 P.2d 725.

An employee may bring action against employer for intentional infliction of emotional distress caused by discrimination in violation of §378-2, and this action is not barred by exclusivity provision of §386-5. 87 H. 57 (App.), 951 P.2d 507.

Motor vehicles. Negligence of driver of automobile not imputed to guests. 31 H. 750. Guest's duty of care. 31 H. 123. Duty of driver to guest. 31 H. 123.

Automobile rear-end collision. 48 H. 411, 405 P.2d 323.

Employers not liable for acts of employees resulting in automobile accident under theories of respondeat superior, negligent entrustment, or general negligence. 72 H. 387, 819 P.2d 84.

Driving vehicle with blood alcohol level above legal limit does not establish actionable or contributory negligence unless causal relationship is established between driver's alleged intoxication and accident. 73 H. 385, 834 P.2d 279.

Where appellants alleged that defendant was liable for deaths caused by drunk driving of one of its employees, appellants presented colorable claim of liability under theory of respondeat superior and viable claim for negligent failure to control an employee under Restatement (Second) of Torts §317. 76 H. 433, 879 P.2d 538.

Products liability. Appellants failed to raise genuine issue of material fact as to whether raw material manufacturer had duty to warn appellants of dangers posed by use of raw material in production of implant devices. 82 F.3d 894.

Contractor not liable under strict products liability doctrine absent evidence that contractor was in product chain of title. 789 F. Supp. 1521.

Because court could not make factual determination as to whether brushless exciter and generator were one "product", court would not grant summary judgment to the effect that all damages claimed under tort and strict liability theories were barred by doctrine of economic loss. 838 F. Supp. 1390.

Device implanted in plaintiff's leg had no requirements imposed upon it by Medical Device Amendments to Federal Food, Drug, and Cosmetic Act or Food and Drug Administration which would preempt state tort claims. 841 F. Supp. 327.

Defendants' motion for partial summary judgment on plaintiff's claim for strict product liability granted, where defendants did not play integral role in production or marketing of lanai tile, and tile did not constitute a "product" under Hawaii law. 841 F. Supp. 986.

Plaintiffs failed to meet burden of proving that defendant placed defective product in the stream of commerce. 844 F. Supp. 590.

There was no legal basis for requiring raw material supplier to warn ultimate consumers of implant. 844 F. Supp. 590.

Economic loss doctrine applied to tort actions in the case, barring any cause of action in tort and strict liability, where plaintiff suffered only pecuniary injury as result of defendants' alleged conduct and was limited to recovery under law of contract. 955 F. Supp. 1213.

Strict products liability-adoption of doctrine, proof of defect, parties in chain of distribution. 52 H. 71, 470 P.2d 240.

In strict products liability action, state-of-the-art evidence not admissible to establish whether seller knew or should have known of dangerousness of product. 69 H. 287, 740 P.2d 548; 960 F.2d 806.

Punitive damages may be awarded in products liability action based on underlying theory of strict liability where plaintiff proves requisite aggravating conduct on part of defendant. 71 H. 1, 780 P.2d 566.

Publication is not a "product". 73 H. 359, 833 P.2d 70.

To bring implied warranty of merchantability action for personal injury, plaintiff must show product unmerchantability sufficient to avoid summary judgment on issue of defectiveness in a tort strict products liability suit. 74 H. 1, 837 P.2d 1273.

Economic loss rule applies to bar recovery of pure economic loss in actions based on products liability but does not bar actions based on negligent misrepresentation or fraud. 82 H. 32, 919 P.2d 294.

Manufacturer not negligent in failing to warn of "blind zone" danger where danger involved in using straddle carrier was obvious and apparent, discernible by casual inspection, and generally known and recognized. 85 H. 336, 944 P.2d 1279.

Negligence and strict products liability claims against defendants for defective manufacture or design of fungicide not preempted by Federal Insecticide, Fungicide, and Rodenticide Act. 86 H. 214, 948 P.2d 1055.

Where defendants voluntarily assumed express warranty on fungicide label, and though express warranty on label was EPA approved it was not mandated under Federal Insecticide, Fungicide, and Rodenticide Act, Act did not preempt plaintiffs' claims for breach of express warranty. 86 H. 214, 948 P.2d 1055.

As dangers of riding unrestrained in open cargo bed of pickup truck are obvious and generally known to ordinary user, truck manufacturer had no duty to warn potential passengers of those dangers. 87 H. 413, 958 P.2d 535.

Escalator was not a "product" for purposes of strict liability claim against department store where it was located, but was a "product" for purposes of strict liability claims against manufacturer and distributor. 89 H. 204, 970 P.2d 972.

It is not always necessary to produce the specific instrumentality causing the accident to prove a case in products liability. 1 H. App. 111, 615 P.2d 749.

Negligence and strict liability principles, discussed. 10 H. App. 547, 879 P.2d 572.

In breach of express warranty actions based on seller's failure to deliver goods in conformance with an express promise, affirmation of fact, or description, "substantial factor" test proper standard to apply in determining proximate cause. 86 H. 383 (App.), 949 P.2d 1004.

UCC statute of limitations applies to breach of express warranty claim for personal injury. 86 H. 383 (App.), 949 P.2d 1004.

Res ipsa loquitur. Doctrine of res ipsa loquitur under Hawaii tort law did not apply in action under Federal Tort Claims Act for injuries suffered by hand grenade thrown in restaurant parking lot. 938 F.2d 158.

Where inference of negligence raised by res ipsa loquitur is so strong that jury could not reasonably reject it, court may enter judgment n.o.v. 57 H. 279, 554 P.2d 1137.

Instruction. 59 H. 319, 582 P.2d 710.

Elements were not established satisfactorily so as to warrant application of the doctrine; invocation of the doctrine does not establish a presumption of negligence or shift the burden of proof. 77 H. 269 (App.), 883 P.2d 691. See 40 H. 198; 43 H. 289, reh'g den. 43 H. 330; 48 H. 330, 335, 402 P.2d 289; 49 H. 77, 412 P.2d 669, reh'g den. 49 H. 267, 414 P.2d 428.

Other torts. Defendants' statements implying attorney's poor client representation did not place attorney in false light where general and specific contexts in which statements were made did not imply assertion of an objective fact and statements were incapable of being proved true or false. 56 F.3d 1147.

District court did not err in rejecting appellants' trademark claim, since appellants could offer no evidence that trademark holder voluntarily licensed its trademark to manufacturer or that trademark holder had significant involvement in design, manufacture, or distribution of manufacturer's implant. 82 F.3d 894.

Plaintiffs' argument that since manufacturer improperly used defendant's trademark, and defendant failed to prevent this improper use, defendant was liable for alleged defective nature of implant, rejected. 844 F. Supp. 590.

Plaintiff could not prevail on false imprisonment claim, where defendant police officer and defendant resident manager had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167.

Defendant's motion to dismiss count regarding tortious interference with contract denied, where defendant alleged that a director or officer may not be liable for tortiously interfering with corporation's contract unless the director or officer acted solely for personal benefit; plaintiffs stated a claim for tortious interference with contract. 895 F. Supp. 1365.

In case arising out of alleged assault on airplane, tort claims for assault and battery preempted by Airlines Deregulation Act. 905 F. Supp. 823.

Plaintiffs failed to demonstrate that their claim for tortious interference with contract had any factual basis. 920 F. Supp. 1080.

Hawaii supreme court, seeking to avoid inequitable or absurd result, would allow plaintiff's bad faith claim, where plaintiff submitted claims to defendant insurer for losses suffered as a third-party beneficiary of insurance contract. 947 F. Supp. 429.

Independent cause of action for breach of covenant of good faith and fair dealing would not lie, where there was no coverage liability on underlying insurance policy. 955 F. Supp. 1218.

Where defendant contended that claim for breach of implied covenant of good faith and fair dealing was barred by two-year statute of limitations governing damage to persons and property (§657-7), since there is no element in the cause of action for bad faith that requires a plaintiff to suffer personal injury, it is not in reality a cause of action based upon a "personal injury", and the applicable statute of limitations is six years and is found in the catchall provision of §657-1 (§657-1(4)). 986 F. Supp. 1334.

Limitations period applicable to cause of action for bad faith, discussed; where complaint was not filed until almost one year after the limitations period had lapsed, to the extent that complaint alleged a claim for the tort of bad faith denial of benefits, summary judgment granted in favor of defendant as to plaintiff's claim for tort of bad faith. 11 F. Supp. 2d 1204.

Violations of the unfair settlement provision, §431:13-103(a), may be used as evidence to indicate bad faith in accordance with the guidelines of *Best Place, Inc. v. Penn America Ins. Co.* 27 F. Supp. 2d 1211.

Plaintiff failed to exhaust the administrative remedies provided to plaintiff by chapter 386; prior to filing a separate suit for bad faith denial of benefits or payments, plaintiff must first exhaust all available administrative remedies before the department of labor and industrial relations, disability compensation division. 28 F. Supp. 2d 588.

Assault aboard ship. 2 H. 255; 29 H. 564.

Wilful negligence. 30 H. 12.

Public contractor. 31 H. 296.

Landlord, tenant and third party. 31 H. 740.

Landlord and tenant. 11 H. 395.

Conditional vendee may maintain action for injury to property. 30 H. 44.

Collision defined. 29 H. 101. See 29 H. 122.

Disposal of surface waters, resultant damage. 40 H. 193; 47 H. 68, 384 P.2d 308; 47 H. 329, 388 P.2d 214.

Operator of bathing pools, duty of. 40 H. 513.

Disposal of surface waters. 52 H. 156, 472 P.2d 509.

Liability of one who voluntarily undertakes a course of conduct intended to induce another to engage in an action. 58 H. 502, 573 P.2d 107.

Appellants' state tort claims for false arrest, false imprisonment, and malicious prosecution failed as a matter of law because appellants did not contest the preliminary hearing determination of probable cause and their commitment to circuit court for trial. Appellants failed to cite to any persuasive or relevant authority in support of their contention that where actions or inactions of the prosecutor subsequent to a preliminary hearing "erodes" probable cause, an action for false arrest, false imprisonment, or malicious prosecution arises. 76 H. 219, 873 P.2d 98.

Where defendants-appellants brought interference with contract claim against plaintiff-appellee, there was no evidence that plaintiff-appellee intentionally induced [third party] to

breach agreement with defendants-appellants, and defendants-appellants failed to prove damages resulting from the alleged breach. 78 H. 40, 890 P.2d 277.

Bad faith cause of action may be brought by first-party insured for insurer misconduct. 82 H. 120, 920 P.2d 334.

Breach of implied contractual duties owed by workers' compensation insurer to employee, including duty to handle and pay claims in good faith, gives rise to independent tort cause of action by employee, the intended third-party beneficiary. 83 H. 457, 927 P.2d 858.

Claimant not precluded by exclusivity provision of §386-5 from seeking common law tort remedies against employer's insurer where injuries allegedly caused by insurer's denial of medical benefits and disability payments not "work injuries" within scope of chapter 386. 83 H. 457, 927 P.2d 858.

In the context of construction litigation regarding the alleged negligence of design professionals, a tort action for negligent misrepresentation alleging damages based purely on economic loss is not available to a party in privity of contract with a design professional; recovery limited to contract remedies. 87 H. 466, 959 P.2d 836.

Hawaii law does not recognize tortious breach of contract actions in the employment context. 89 H. 234, 971 P.2d 707.

Tort recovery, including recovery of punitive damages, is not allowed under Hawaii law for breach of contract in the absence of conduct that (1) violates a duty that is independently recognized by principles of tort law and (2) transcends the breach of the contract. 89 H. 234, 971 P.2d 707.

Where insured presented evidence that raised genuine issue of material fact as to insurer's liability for bad faith if insurer's law firm's conduct of defense breached law firm's duties towards insured and breach was causally induced by insurer's actions, summary judgment erroneously entered in favor of insurer on insured's bad faith claim. 90 H. 39, 975 P.2d 1159.

Sellers' brokers not entitled as a matter of law to a judgment that they were not liable to buyer for tort of negligent misrepresentation. 6 H. App. 188, 716 P.2d 163.

Where public policy against terminating employee solely because employee suffered a compensable work injury is evidenced in §378-32 and remedy is available under §378-35, judicially created claim of wrongful discharge in violation of public policy could not be maintained. 87 H. 57 (App.), 951 P.2d 507.

A plaintiff alleging the tort of interference with prospective contractual relations must plead and prove six elements. 87 H. 394 (App.), 957 P.2d 1076.

Under circumstances of case, defendant's communication of information to prospective employer's manager was privileged because it was truthful; thus, defendant could not be held liable as a matter of law for any alleged intentional interference with plaintiff's prospective employment contract with prospective employer. 87 H. 394 (App.), 957 P.2d 1076.

Allowance of intrafamily tort suits in Hawaii does not constitute a public policy which may be used to invalidate household exclusion clauses in a homeowner's policy. 87 H. 430 (App.), 958 P.2d 552.

As action for bad faith against insurer is an independent tort, the proper limitation provision for bringing an action should not be that provided in the insurance policy, but rather that provided in §657-7, which limits causes of action for torts to two years. 88 H. 442 (App.), 967 P.2d 639.

Where insured's bad faith claim was not "any issue referable to arbitration under an agreement in writing" under §658-5, and action for bad faith in the first-party insurance context is independent of the policy, an ongoing appraisal process did not bar insured from bringing a lawsuit alleging bad faith handling of insured's claim. 88 H. 442 (App.), 967 P.2d 639.

Sale by real estate broker of client's property to a party in which broker had pecuniary interest without disclosure to client was constructive fraud. 2 H. App. 188, 628 P.2d 214.

False imprisonment. 2 H. App. 655, 638 P.2d 383.

Miscellaneous. Where money is tortiously taken claimant may waive tort and sue in assumpsit. 11 H. 270.

Contract of bailment, duty of bailor. 28 H. 145; 47 H. 588, 393 P.2d 171.

Pleading scope of authority. 29 H. 604; 30 H. 452.

Last clear chance, essential elements. 52 H. 129, 471 P.2d 524.

Choice of law. 63 H. 653, 634 P.2d 586.

§663-3

Death by wrongful act.

(a) When the death of a person is caused by the wrongful act, neglect, or default of any person, the deceased's legal representative, or any of the persons enumerated in subsection (b), may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons enumerated in subsection (b), except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial.

(b) In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including:

- (1) Loss of society, companionship, comfort, consortium, or protection;
- (2) Loss of marital care, attention, advice, or counsel;
- (3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter 572C;
- (4) Loss of filial care or attention; or
- (5) Loss of parental care, training, guidance, or education, suffered as a result of the death of the person; by the surviving spouse, reciprocal beneficiary, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the injured person, except as otherwise provided.

[L 1923, c 245, §1; RL 1925, §2681; am L 1931, c 16, §1; am L 1933, c 139, §1; RL 1935, §4052; RL 1945, §10486; am L 1955, c 205, §1; RL 1955, §246-2; HRS §663-3; am L 1972, c 144, §2(c); am L 1997, c 383, §20]

[[See also the note written above for Section 663-1, above that Section's annotations.]]

[[annotations:]]

Rules of Court

See HRCP rule 17.

Law Journals and Reviews

Masaki v. General Motors Corp.: Negligent Infliction of Emotion Distress and Loss of Filial Consortium. 12 UH L. Rev. 215.

Punitive Damages in Hawaii: Curbing Unwarranted Expansion. 13 UH L. Rev. 659.

Case Notes

Action barred in Hawaii district courts under Death on the High Seas Act. 230 F.2d 780.

Section does not authorize punitive damages. 644 F.2d 594.

No recovery on the facts, by father and sister of victim of shell explosion. 158 F. Supp. 394.

Parents may bring an action for wrongful death of a viable fetus. 745 F. Supp. 1573.
Cause of action existed for child's loss of consortium despite non-fatal injury to parent. 781 F. Supp. 1487.

Damages parents entitled to for loss of son, discussed. 823 F. Supp. 778.

Limitations period in section applied, where defendants argued that plaintiff's wrongful death action was derivative of the claims of the estate and therefore barred by applicable statutes of limitation; statute of limitations governing plaintiff's claim should begin to run when plaintiff experienced plaintiff's injury, not when plaintiff's husband knew of husband's injury. 854 F. Supp. 702.

Prior to this enactment, no action maintainable by parent for death of adult daughter by wrongful act. 27 H. 626.

There was a common-law action for death of spouse or minor child. 2 H. 209; 16 H. 615.

Common-law action based on relationship of husband and wife and parent and child not abrogated by this section prior to 1955 amendments. 37 H. 571. See 45 H. 373, 394, 369 P.2d 96, reh'g den. 45 H. 443, 369 P.2d 114, as to effect of 1955 amendments.

Child has no cause of action for injuries to parent not resulting in death. 41 H. 634; 244 F.2d 604.

Action against employer barred where dependent of decedent has remedy for compensation under Workmen's Compensation Act. 41 H. 422; 42 H. 518.

Effect of Workmen's Compensation Law prior to 1931 amendments. 32 H. 61; 32 H. 153.

Relationship between this section and §663-7 discussed. 45 H. 373, 369 P.2d 96.

Damages: 34 H. 5; 34 H. 426; 40 H. 691.

Damages to widow and children for loss of support and loss of love, care, affection and guidance. 282 F.2d 599.

Recovery for loss of support, computation of. 245 F. Supp. 981, 1012-1016, aff'd 381 F.2d 965.

Recovery by widow and child of decedent for loss of consortium and parental care. 245 F. Supp. 981, 1017-1018, aff'd 381 F.2d 965.

Although trial court may not have been completely accurate in certain particulars in awarding damages, not set aside if the total award is reasonable. 499 F.2d 866.

Parties, prior to 1933 amendment. 32 H. 611. See 135 F. Supp. 376; 244 F.2d 604.

Dependents, who are. 34 H. 426, 442.

The limitations period is tolled by §657-13 during minority of surviving children. 63 H. 273, 626 P.2d 182; 69 H. 410, 745 P.2d 285.

If decedent had no cause of action, survivors had none. 69 H. 95, 735 P.2d 930.

Since claims were derivative in nature and arose from a single person, defendant was not underinsured. 70 H. 42, 759 P.2d 1374.

Section does not distinguish between minor and adult children. 71 H. 1, 780 P.2d 566.

Section entitles any person wholly or partially dependent on deceased to raise claims for both pecuniary injuries and loss of love and affection. 75 H. 544, 867 P.2d 220.

A breach of express warranty action could be a basis for a derivative wrongful death action brought pursuant to this section. 86 H. 383 (App.), 949 P.2d 1004.

As cause of action for punitive damages survives the death of the decedent under §663-7, punitive damages are not recoverable in an action under this section. 87 H. 273 (App.), 954 P.2d 652.

Claims brought under this section must relate to the general loss of love and affection suffered by the designated survivors. 87 H. 273 (App.), 954 P.2d 652.

Cited: 349 F.2d 693, 698; 134 F. Supp. 868, 870; 351 F. Supp. 185, 187; 41 H. 603, 604; 45 H. 443, 444, 369 P.2d 96.

[[Chapters 701-713, “Penal Code”]]
[[Chapter 706, “Disposition of Convicted Defendants”]]
[[Part IV, “Imprisonment”]]

§706-670.5

Notice of parole or final unconditional release.

(1) As used in this section, the following terms have the following meanings:

"Offense against the person" means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses.

“Prisoner" or "parolee" means a person who has been convicted of an offense against the person.

“Surviving immediate family member" means a person who is a surviving grandparent, parent, sibling, spouse or reciprocal beneficiary, child, or legal guardian of a deceased victim.

“Victim" means the person who was the victim of the offense against the person for which the prisoner or parolee was convicted.

(2) The Hawaii paroling authority shall give written notice of the parole or release from parole of a prisoner or parolee to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(3) The department of public safety shall give written notice of the final unconditional release of a prisoner or parolee, who has not been previously paroled or discharged, to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(4) The authority or department, as the case may be, shall provide written notice to the victim or surviving immediate family member at the address given on the written request for notice or such other address as may be provided by the victim or surviving immediate family member, not less than ten days prior to parole or final unconditional release. The authority or department, in its discretion, may instead give written notice to the witness or victim counselor programs in the prosecuting attorney's office in the county where the victim or the surviving immediate family member resides.

(5) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State, the officer, or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by a competent authority.

[L 1983, c 184, §2(2); am L 1985, c 227, §1; am L 1987, c 338, §10; am L 1989, c 211, §8; am L 1997, c 383, §66]

[[annotations:]]
Revision Note

Subsection designations changed to conform to style of Penal Code.

Cross References

Notice of escape, see §706-673.

Sex offender registration, see chapter 846E.

COMMENTARY ON §706-670.5

Act 184, Session Laws 1983, added this section to require notification to a crime victim if a defendant who harmed the victim is released into the community after conviction. This addition was intended to insure that crime victims "are treated with fairness and respect" and that agencies in the criminal justice system cooperate with each other to provide information and other help to crime victims. House Conference Committee Report No. 46.

Act 227, Session Laws 1985, amended this section so that:

- (1) victims or surviving immediate family members of a deceased victim are notified whenever the offender is paroled or unconditionally released; and
- (2) in lieu of notifying a victim or surviving family member, the appropriate authorities may notify the witness or victim counselor programs in the county where the victim or a family member resides.

Under prior law, only the victim was notified of the parole or unconditional release. House Conference Committee Report No. 5, Senate Conference Committee Report No. 4.

Act 383, Session Laws 1997, amended this section by amending the definition of "surviving immediate family member" to include a reciprocal beneficiary. The amendment establishes the status of reciprocal beneficiaries and provides certain state governmental benefits to those with that status. Among the benefits extended to reciprocal beneficiaries which are substantially equivalent to those extended to spouses is legal standing relating to victims rights. Conference Committee Report No. 2.

§706-673

Notice of escape.

(1) As used in this section, the following terms have the following meanings:

"Offense against the person" means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses.

"Prisoner" means a person who has been convicted of an offense against the person.

"Surviving immediate family member" means a person who is a surviving grandparent, parent, sibling, spouse or reciprocal beneficiary, child, or legal guardian of a deceased victim.

"Victim" means the person who was the victim of the offense against the person for which the prisoner was convicted.

(2) Upon written request, the department of public safety shall give notice of the escape of a prisoner, immediately following the escape, by the most reasonable and expedient means available, to each victim or a surviving immediate family member of the victim, through the victim witness assistance program in the county where the crime was committed.

(3) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State, the officer, or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by a competent authority.

[L 1990, c 193, §1; am L 1997, c 383, §67]

[[annotations:]]

Cross References

Sex offender registration, see chapter 846E.

COMMENTARY ON §706-673

Act 193, Session Laws 1990, added this section which would require the department of public safety to notify victims or their next-of-kin of an escape by the prisoner who committed a crime against the victim. The legislature felt this requirement would make

victims of crimes feel more secure knowing they would be notified immediately if the prisoner escaped. Senate Standing Committee Report No. 2935.

Act 383, Session Laws 1997, amended this section by amending the definition of "surviving immediate family member" to include a reciprocal beneficiary. The amendment establishes the status of reciprocal beneficiaries and provides certain state governmental benefits to those with that status. Among the benefits extended to reciprocal beneficiaries which are substantially equivalent to those extended to spouses is legal standing relating to victims rights. Conference Committee Report No. 2.

[[Chapters 701-713, "Penal Code" (continued)]]
[[Chapter 707, "Offences Against the Person"]]
[[Part VII, "Extortion"]]

§707-769

Defenses to extortion.

(1) It is a defense to a prosecution for extortion as defined by paragraph (1) of section 707-764 that the defendant:

- (a) Was unaware that the property or service was that of another; or
- (b) Believed that the defendant was entitled to the property or services under a claim or right or that the defendant was authorized, by the owner or by law, to obtain or exert control as the defendant did.

(2) If the owner of the property is the defendant's spouse or reciprocal beneficiary, it is a defense to a prosecution for extortion under paragraph (1) of section 707-764 that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and the defendant's spouse or reciprocal beneficiary were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, or money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) It is an affirmative defense to a prosecution for extortion as defined in paragraphs (1) and (2) of section 707-764 and as further defined by subparagraphs (e), (f),

(g), and (i), that the defendant believed the threatened accusation, penal charge, or exposure to be true, or the proposed action of a public servant was justified, and that the defendant's sole intention was to compel or induce the victim to give property or services to the defendant due the defendant as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, or to induce the victim to take reasonable action to prevent or to remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant in circumstances to which the threat relates.

(5) In a prosecution for extortion as defined in paragraph (1) of section 707-764, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

[L 1979, c 106, pt of §1; gen ch 1993; am L 1997, c 383, §68]

[[annotations:]]

Case Notes

Defendant's attempt to obtain plaintiff's property was made under claim of [sic] right. 855 F. Supp. 1156.

COMMENTARY ON §§707-764 TO 769

Act 106, Session Laws 1979, established these sections as part of a consolidation of laws pertaining to extortion wherein the Legislature sought to make those laws simpler and more comprehensive. The Legislature rejected a provision making acts which caused the victim "great mental anguish" extortion in the first degree on the grounds that such a standard is too subjective, and would differ from one individual to the next. Conference Committee Report No. 43.

Act 28, Session Laws 1993, amended §707-766 by stating the elements of the offense of extortion in the second degree in the disjunctive, consistent with the intent of the 1979 legislature in enacting that section, and by making the language of that section gender neutral. House Standing Committee Report No. 190, Senate Standing Committee Report No. 1121.

Act 383, Session Laws 1997, amended §707-769 to provide a defense to prosecution for extortion to reciprocal beneficiaries. In establishing the status of reciprocal beneficiaries, the Act provides certain rights and benefits, and represents a commitment to provide substantially similar government rights to those couples who are barred by law from marriage. Conference Committee Report No. 2.

[[Chapters 701-713, “Penal Code” (continued)]]
[[Chapter 708, “Offences Against Property”]]
[[Part IV, “Theft and Related Offences”]]

§708-834

Defenses: unawareness of ownership; claim of right; household belongings; co-interest not a defense.

(1) It is a defense to a prosecution for theft that the defendant:

- (a) Was unaware that the property or service was that of another; or
- (b) Believed that the defendant was entitled to the property or services under a claim of right or that the defendant was authorized, by the owner or by law, to obtain or exert control as the defendant did.

(2) If the owner of the property is the defendant's spouse or reciprocal beneficiary, it is a defense to a prosecution for theft of property that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and the defendant's spouse or reciprocal beneficiary were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

[L 1972, c 9, pt of §1; am L 1979, c 106, §8; am L 1980, c 232, §41; gen ch 1993; am L 1997, c 383, §69]

[[annotations:]]

COMMENTARY ON §708-834

[[Note: the footnotes in this commentary, numbered 1-3 and each enclosed in single brackets, are given at the end of all the annotations on this Section.]]

Both the defenses allowed under §708-834(1) are probably unnecessary in light of an informed reading of the substantive definitions of the various modes of theft. The existence

of either condition (a) or (b) would relieve the actor of the culpability required to establish the offense: the actor could not have intended to deprive another of property (or refuse payment for services) unless the actor was aware that the property or services were that of another; and a claim of right, assuming that it amounts to a belief that the actor is the true owner, would not only indicate that the actor did not have the requisite mental state, it would constitute a mistake of fact defense under §702-218. The summary and restatement of this subsection is principally for purposes of clarity and emphasis. The marital defense of subsection (2) is based upon various theories. First, the uncertainty of ownership of much household property, together with the potential bitterness of interspousal conflict, provide numerous opportunities for a miscarriage of justice.[1] Alternatively, it is said that household belongings, defined in subsection (3), constitute a kind of "common pool of wealth," and that misappropriations in this context are so generally tolerated as not to deviate substantially from socially-accepted norms. A wife who rifles her husband's wallet, or a husband who pawns his wife's jewelry, does not present a grave danger to the community, so long as the activity is so confined. Finally, criminal courts are unsuited to handle breakdowns in the family structure of which interspousal theft complaints are only a symptom.[2] Subsection (4) is intended to cover the situation where an aggrieved person attempts to seek an informal solution by threatening legal action unless restitution, indemnification, or compensation is made. The most significant instance of this device is the waiver of prosecution commonly offered by insurance companies in exchange for the return of valuable merchandise. The rationale here is that it is hardly fair to penalize someone for trying to recover one's own goods (or the value thereof), nor could the penal law realistically expect to suppress such natural inclinations. Subsection (5) merely requires that the interest which the actor asserts under a claim of right must be inconsistent with that of the victim. The premise is that if the interest is not inconsistent, it does not justify the actor's possession as opposed to that of the victim. Furthermore, it is felt that "co- owners should be as well protected against the depredations of other co-owners as they are against outsiders." [3]

SUPPLEMENTAL COMMENTARY ON §708-834

Act 106, Session Laws 1979, amended this section as part of a consolidation of laws pertaining to extortion.

Act 232, Session Laws 1980, added subsection (4) and the words "co-interest not a defense" in the section heading to restore language erroneously omitted by L 1979, Act 107, §8.

Act 383, Session Laws 1997, amended this section to provide a defense to prosecution for theft of property to reciprocal beneficiaries. In establishing the status of reciprocal beneficiaries, the Act provides certain rights and benefits and represents a commitment to provide substantially similar government rights to those couples who are barred by law from marriage. Conference Committee Report No. 2.

Case Notes

Claim of right defense discussed. 62 H. 25, 608 P.2d 855.

Claim of right defense to theft under this section does not apply in a prosecution for robbery. 83 H. 264, 925 P.2d 1088.

Subsection (1)(b)'s defense was not applicable to offense of unauthorized control of propelled vehicle (§708-836). 10 H. App. 200, 862 P.2d 1073.

§708-834 Commentary [[Footnotes]]:

1. M.P.C., Tentative Draft No. 2, comments at 104 (1954).
2. Id. at 104-5.
3. See Prop. Mich. Rev. Cr. Code, comments at 246.

[[Chapters 701-713, "Penal Code" (continued)]]
[[Chapter 709, "Offences Against the Family and Against Incompetents"]]

§709-906

Abuse of family or household members; penalty.

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter. For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or

harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer's presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer lawfully may order the person to leave the premises for a period of separation of twenty-four hours, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;
- (c) Where the police officer makes the finding referred to in paragraph (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and
- (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense and any other subsequent offense that occurs within one year of the previous offense, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days. Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(6) Whenever a court sentences a person pursuant to subsection (5), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

(7) For any subsequent offense occurring within two years after a second misdemeanor conviction, the person shall be charged with a class C felony.

(8) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

(9) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith or may file a criminal complaint through the prosecuting attorney of the applicable county.

(10) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

(11) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for abuse of a family or household member.

(12) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

(13) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

(14) When a person is ordered by the court to undergo any domestic violence intervention, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court.

[L 1973, c 189, §1; am L 1980, c 106, §1 and c 266, §2; am L 1981, c 82, §37; am L 1983, c 248, §1; am L 1985, c 143, §1; am L 1986, c 244, §1; am L 1987, c 360, §1; am L 1991, c 215, §§2, 4 and c 257, §§1, 2; am L 1992, c 290, §7; am L 1994, c 182, §§1, 3; am L 1995, c 116, §1; am L 1996, c 201, §2; am L 1997, c 321, §1, c 323, §1, and c 383, §70; am L 1998, c 172, §8; am L 1999, c 18, §18]

[[annotations:]]

Cross References

Shelters, unlawful entry, see §708-816.5.

COMMENTARY ON §709-906

This section was added by Act 189, Session Laws 1973, to provide protection to a spouse from being physically abused by the other spouse. Standing Committee Report No. 828 (1973) states: "It is apparent today that there is little, if any, protection for a spouse beaten by the other spouse.... This bill is intended to alleviate this problem to a certain extent. A police officer, upon arrival at the scene, is given the power to arrest if the offense is committed in his presence. Section 571-14(2)(B) gives the family court exclusive jurisdiction over any adult charged with an offense, other than a felony, against the person of the defendant's husband or wife. Section 571-42 establishes the procedure to be followed in such cases. It is intended by your Committee that these laws be enforced to the extent that they will afford the abused spouse the necessary protection needed. Further, unless it appears adverse to the best interests of all concerned, the family unity should be retained without the necessity of the abusing spouse being branded a 'criminal.' Toward this end, the courts are asked to aid these persons needing its assistance in order that they may be rehabilitated."

SUPPLEMENTAL COMMENTARY ON §709-906

Act 106, Session Laws 1980, amended subsection (1) to authorize the police to transport the victim of spouse abuse to a safe place when in the investigating officer's judgment it is

reasonably necessary to do so and there is no effective alternative transportation. Senate Standing Committee Report No. 667-80, House Standing Committee Report No. 875-80.

Act 266, Session Laws 1980, amended subsections (2) and (3) to authorize a police officer to make an arrest or take the actions specified in subsection (3) regardless of whether the physical abuse occurred in the officer's presence or not. The changes to this section and the enactment of §709-907 were intended to expand the protection and remedies available to a spouse who is the victim of non-felonious offense against the person committed by the other spouse. While recognizing the expertise of the family court, the conference committee stated that "your Committee is concerned that family court administrative policies may be diverting an inordinate number of petitions for summonses to counseling, and respectfully recommends that the court review its policy to ensure that the remedy the law creates not be vitiated by undue reluctance to employ it." Conference Committee Report No. 29-80 (33-80).

Act 82, Session Laws 1981, substituted "the abused person" for "such person" in the last sentence of subsection (1) for purposes of clarity.

Act 248, Session Laws 1983, amended this section and repealed §709-907. Two of the changes made in this section were intended to encourage more immediate police action in spouse abuse cases: the removal of the requirement that "substantial" physical harm to a spouse occur before police can act and the granting of civil immunity to police who act in good faith when arresting persons for spouse abuse. Along with other changes, these changes were felt to "greatly assist in dealing with spouse abuse." The section was also amended to substitute sex-neutral terms for gender-based language. Senate Standing Committee Report No. 793.

Act 143, Session Laws 1985, amended the spouse abuse law to:

- (1) require police to prepare a written report if there are reasonable grounds to believe that abuse exists;
- (2) increase the "cooling off" period to twelve hours;
- (3) require the arrest of the abuser who refuses to leave the premises when ordered by police or who returns before the "cooling off" period expires;
- (4) mandate a minimum 48-hour jail term and counseling and treatment of a convicted abuser; and
- (5) extend coverage of the law to protect family or household members from abuse.

These changes are intended to effectively address and combat family violence and its effect on the community. Senate Conference Committee Report No. 6, House Conference Committee Report No. 15.

Act 244, Session Laws 1986, required police to issue written citations to abusive persons ordered to leave the premises of a family or household for a cooling off period. The written citation would accomplish a number of purposes. First, it informs the abusive person of the conditions of the cooling off period. Second, the citation helps insure that the cooling off period is observed. Third, responding police may use the citation as an efficient means of transmitting information to police on subsequent shifts who are resummoned to the same household where the abuse occurred. Finally, the citation eases prosecution of the abusive person since it records the exact facts of the alleged abuse and provides proof that the defendant was notified of the conditions of the cooling off period. House Standing Committee Report No. 518-86, Senate Standing Committee Report No. 940-86.

Act 360, Session Laws 1987, changed the time period before which a person convicted under this section may apply for an order to expunge their records, from one year to five years. The legislature found that the five year period would cover a crucial period in which reabuse is frequent. The legislature stated a five year period would provide a more realistic time period in which a person may demonstrate that expungement is warranted. Senate Standing Committee Report Nos. 879 and 1126.

Act 290, Session Laws 1992, amended this section by providing that for the first offense of the abuse of a household member the person shall serve a minimum jail sentence of forty-eight hours, and, for subsequent offenses occurring within one year of the previous offense, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days. Conference Committee Report No. 122.

Act 182, Session Laws 1994, amended this section to provide for a twenty-four hour cooling off period and to extend the cooling off period until the first day following a weekend or legal holiday. Conference Committee Report No. 50.

Act 116, Session Laws 1995, deleted the repeal date of the amendment to this section made by Act 182, Session Laws 1994, which provided for a twenty-four hour cooling off period. The legislature found that the cooling off period imposed by the police in certain circumstances was very successful in preventing further domestic violence; the cooling off period created a "safe" period during which abuse victims might seek refuge in a shelter or use other safety options. Making the twenty-four hour cooling off period a permanent requirement would allow the police to continue to use the cooling off period to prevent domestic abuse. House Standing Committee Report No. 1566.

Act 321, Session Laws 1997, amended this section by deleting subsection (13) to eliminate the possibility of expungement of records relating to a person's arrest, trial, conviction,

dismissal, or discharge involving abuse of a family or household member. The legislature found that domestic violence was a serious crime affecting many families in the community, and for which perpetrators must be held accountable. Further, the repetitive and retaliatory nature of domestic violence required accurate and complete documentation of a perpetrator's history for the future safety of the victim and the victim's family. Senate Standing Committee Report No. 1553.

Act 323, Session Laws 1997, amended subsection (4) by prohibiting contact with a victim of domestic violence, regardless of location, during the "cooling off" period. The Act prohibited the perpetrator of domestic violence from "initiating" contact with the victim so that a violation of subsection (4) was avoided in the event that the victim had reason to contact the perpetrator. The legislature found that the provisions regarding the "cooling off" orders issued by police have had a significant impact in denying domestic violence perpetrators access to their victims. However, its success has been limited in part by the fact that the protection extends only to the premises and not to the victims themselves or to other locations that might be important to the victims, such as their place of employment. The legislature believed that extending the temporary protective legal shield to victims, regardless of their location, would remedy the problem. House Standing Committee Report No. 1481.

Act 383, Session Laws 1997, amended this section by amending the definition of "family or household member" to include reciprocal beneficiaries and former reciprocal beneficiaries. The amendment establishes the status of reciprocal beneficiaries and provides rights and benefits to those with that status. Among the benefits extended to reciprocal beneficiaries which are substantially equivalent to those extended to spouses is legal standing relating to domestic violence family status. Conference Committee Report No. 2.

Act 172, Session Laws 1998, amended this section by, among other things, adding persons who have a child in common to the definition of "family or household member", changing the term "cooling off period" to "period of separation", and making the third offense of abuse of family or household member within two years of the second conviction a felony. Act 172 also amended the section to require that defendants convicted of abuse of family or household member be immediately incarcerated, clarifying that the amendment did not affect the defendant's right to bail pending appeal pursuant to chapter 804, and that the court, upon a finding of special circumstances, may stay the imposition of the jail term. Additionally, Act 172 deleted "recent" with respect to police issuance of twenty-four hour warnings. Under current law, if a police officer had reasonable grounds to believe that there was recent physical abuse or harm, the officer may order the abuser to leave the premises for a cooling off period of twenty-four hours. The legislature found that police officers responding to a domestic violence complaint had to make quick decisions on whether or not to remove an abuser from a home. The decision was often delayed because an officer had to interpret how "recently" the physical abuse occurred. Deleting the ambiguous term would result in more twenty-four hour warnings, thereby protecting more victims of domestic

abuse. Act 172 also substituted the phrase "domestic violence intervention" for "domestic violence treatment or counseling"; the change reflected the current language in the domestic violence community. Conference Committee Report No. 80, House Standing Committee Report No. 578-98.

Law Journals and Reviews

Essay: When Less Is More--Can Reducing Penalties Reduce Household Violence? 19 UH L. Rev. 37.

Case Notes

Term "physical abuse" is not vague or overbroad. 69 H. 620, 753 P.2d 1250.

Refusal to sign the twelve hour warning was not a crime. 71 H. 53, 781 P.2d 1041.

Mutual affray is not a defense. 71 H. 165, 785 P.2d 1320.

Statute is not unconstitutionally vague or overbroad; victim residing in the same dwelling with defendant for fourteen weeks in another person's house was considered a "family or household member." 71 H. 479, 795 P.2d 280.

Not violated by parent who hit child with belt. 72 H. 241, 813 P.2d 1382.

Constitutional right to confrontation violated. 72 H. 469, 822 P.2d 519.

Trial court's imposition of sentence based solely on unsupported finding that "victim lied for the defendant" unconstitutionally punished defendant for an uncharged crime. 72 H. 521, 824 P.2d 837.

Because a person convicted of offense may be imprisoned for up to one year, the court had a duty to inform defendant of defendant's right to trial by jury in order to ensure a knowing and voluntary waiver of that right. 75 H. 118, 857 P.2d 576.

Prosecution not precluded by principles of double jeopardy from re-trying defendant, where testimony constituted substantial evidence supporting trial court's conviction. 75 H. 118, 857 P.2d 576.

Double jeopardy clause of Hawaii constitution barred unlawful imprisonment but not terroristic threatening prosecution of defendant who had been found guilty of abuse under this section. 75 H. 446, 865 P.2d 150.

Absence of any evidence in the record that defendant and complaining witness were family or household members recognized as plain error necessitating reversal of defendant's conviction. 78 H. 185, 891 P.2d 272.

Requisite state of mind for violation of subsection (1) is intentionally, knowingly, or recklessly; prosecution need only prove recklessness. 81 H. 131, 913 P.2d 57.

Substantial evidence proved defendant consciously disregarded substantial and unjustifiable risk of physically abusing wife by slapping her on side of head. 81 H. 131, 913 P.2d 57.

Police not authorized to order domestic disputants to separate except as specified in this section. 7 H. App. 28, 742 P.2d 388.

Where extended family lives together as a common household, defendant and daughter-in-law were "residing in the same dwelling unit". 9 H. App. 325, 839 P.2d 530.

When family court implicitly entered a deferred acceptance of guilty plea pursuant to §853-1 and conditioned deferral upon defendant's submitting to counseling according to schedule and not committing any subsequent offenses, family court violated §853-4(2), where defendant was charged with abuse of family and household members. 10 H. App. 148, 861 P.2d 759.

The fact that defendant was a "family or household member" for purposes of this section did not satisfy §571-14(1)'s subject matter jurisdiction factual criteria because a "family or household member" is not by that fact "the child's parent or guardian or ... any other person having the child's legal or physical custody". 77 H. 260 (App.), 883 P.2d 682.

In subsection (1), to "physically abuse" someone means to maltreat in such a manner as to cause injury, hurt, or damage to that person's body. 79 H. 413 (App.), 903 P.2d 718.

As defendant's striking of husband did actually cause harm sought to be prevented by this section, no abuse of discretion where trial court holds that infraction not too trivial to warrant the condemnation of conviction under §702-236. 79 H. 419 (App.), 903 P.2d 723.

Insufficient evidence to convict under this section where evidence only showed that victim was injured and defendant's statement of wanting to apologize was not necessarily for the violative conduct. 80 H. 469 (App.), 911 P.2d 104.

Alleged abuse or harm inflicted less than one day earlier was "recent" under this section (1992). 82 H. 381 (App.), 922 P.2d 994.

Complainant's out-of-court statements not hearsay under HRE Rule 801 where offered by State not for their truth, but to show that police had reasonable grounds under this section to issue warning citation which defendant subsequently violated. 82 H. 381 (App.), 922 P.2d 994.

Paragraph (4) not unconstitutionally overbroad as issuance of warning citation must be based on objective facts and circumstances, other than merely a complainant's claim, which would lead a reasonable police officer to believe recent physical abuse was inflicted on family or household member. 82 H. 381 (App.), 922 P.2d 994.

“Reasonable grounds” standard in paragraph (4) not unconstitutionally vague where standard is an objective standard requiring a trial court to independently assess facts and circumstances which responding officers had before them in determining to issue warning citations. 82 H. 381 (App.), 922 P.2d 994.

An uncorroborated prior inconsistent statement of a family or household member offered under HRE Rule 613 and HRE Rule 802.1 as substantive evidence of the facts stated therein may be sufficient, if believed, to establish physical abuse and the manner in which such abuse was inflicted in a prosecution for physical abuse of a family or household member under this section. 84 H. 253 (App.), 933 P.2d 90.

Where defendant lived with victim at victim's residence "probably three to four nights a week", defendant and victim were "persons jointly residing or formerly residing in the same dwelling unit". 85 H. 512 (App.), 946 P.2d 620.

[[Chapter 801D, “Rights of Victims and Witnesses in Criminal Proceedings”]]

§801D-2 Definitions.

In this chapter:

"Crime" means an act or omission committed by an adult or juvenile that would constitute an offense against the person under the Penal Code of this State.

“Homicide victim” means a person whose death was caused by another person under part II of chapter 707.

“Major developments” means arrest or release of the suspect by the police, case deferral by the police, referral to the prosecutor by the police, rejection of the case by the prosecutor, preliminary hearing date, grand jury date, trial and sentencing dates, and the disposition of the case.

“Surviving immediate family members” means surviving grandparents, parents, siblings, spouse, reciprocal beneficiary, children, and any legal guardian of the homicide victim.

“Victim” means a person against whom a crime has been committed by either an adult or a juvenile.

“Witness” means a person whose testimony or knowledge is desired in any proceeding or investigation by a grand jury or in a criminal investigation, action, prosecution, or proceeding.

[L 1988, c 261, pt of §1; am L 1997, c 383, §71]