

JAN 26 2022

A BILL FOR AN ACT

RELATING TO GARNISHMENT.

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

1 SECTION 1. The legislature finds that wage garnishment
2 occurs when a court orders an employer to withhold a specified
3 percentage of an employee's paycheck for payment of a debt.
4 According to a November 2020 report from the National Consumer
5 Law Center, nearly three per cent of individuals in the national
6 workforce had their paychecks garnished for consumer debt, which
7 includes student loans and medical debt. Some states, such as
8 North Carolina, Pennsylvania, South Carolina, and Texas, have
9 prohibited wage garnishment altogether for consumer debt. Ten
10 states and the District of Columbia have either suspended wage
11 garnishment or blocked new wage garnishments during the
12 coronavirus disease 2019 pandemic. Current federal law protects
13 seventy-five per cent of an employee's disposable income, or an
14 amount equal to thirty times the federal minimum wage, whichever
15 is greater, from wage garnishment. Disposable income is the
16 amount of earnings left after legally required deductions,
17 including taxes, social security, medicare, and unemployment



1 insurance, are made on an employee's income. Most states have a
2 higher exemption rate than the federal rate for an employee's
3 disposable income, and some of those states base their
4 exemptions on on a sliding scale.

5 The legislature further finds that Hawaii law exempts from
6 wage garnishment a portion of the defendant's income remaining
7 after the deduction of any amounts required by law to be
8 withheld by withholding an amount to be determined as follows:
9 five per cent of the first \$100 per month, ten per cent of the
10 next \$100 per month, and twenty per cent of all sums in excess
11 of \$200 per month. The legislature also finds that these
12 exemptions do not sufficiently protect consumers, as Hawaii's
13 cost of living is among the highest in the nation. Individuals
14 subject to garnishment may struggle to pay for basic needs,
15 including medical insurance, healthcare, housing, food, and
16 transportation. These basic needs are not taken into
17 consideration in garnishment calculations. Many individuals
18 subject to garnishment may have to file for bankruptcy, become
19 homeless, experience other negative financial outcomes, or
20 become a burden on the State's social services. It is therefore
21 imperative for the State to significantly reduce the financial



1 harms imposed on individuals and families subject to existing
2 garnishment law.

3 Accordingly, the purpose of this Act is to authorize cost
4 of living expenses, as determined by the self-sufficiency
5 standard for the State, to be protected from certain
6 garnishments.

7 SECTION 2. Section 652-1, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Before judgment. When any goods or effects of a
10 debtor are in the possession of an attorney, agent, factor, or
11 trustee (in this chapter jointly and severally included in the
12 term "garnishee"), or when any debt is due from any person (also
13 included under the term "garnishee") to a debtor, or when any
14 person has in the person's possession for safekeeping any moneys
15 of the debtor, any creditor may bring the creditor's action
16 against the debtor and in the creditor's petition for process,
17 or by amendments of the complaint at any time before judgment,
18 after meeting the requirements of section 652-1.5, may request
19 the court to insert in the process a direction that service of a
20 true and attested copy thereof be made upon the garnishee[+], [+] in
21 any of the manners described under section 652-2.5[+], [+] and



1 to summon the garnishee to appear personally upon the day or
2 term appointed in the process for hearing the action or at any
3 other time appointed by the court and then and there on oath to
4 answer all of the following inquiries, herein inclusively
5 referred to as the "disclosure":

6 [~~(1) whether~~] whether at the time the copy was served on
7 the garnishee, the garnishee had any of the goods or
8 effects of the defendant in the garnishee's hands and,
9 if so, the nature, amount and value thereof;

10 [~~(2) whether~~] whether at the time of service, the garnishee
11 was indebted to the defendant and, if so, the nature
12 and amount of the debt; or

13 [~~(3) whether~~] whether at the time of service on the
14 garnishee, the garnishee had any moneys of the
15 defendant in the garnishee's possession for
16 safekeeping and, if so, the amount thereof.

17 The summons and direction shall be signed and issued as is
18 usual in other civil process after proceedings under section
19 652-1.5. The summons shall specify an amount or value of money,
20 debt or goods or effects to be garnished [~~which~~] that shall not
21 exceed one hundred twenty per cent of the amount of the



1 plaintiff's claim, including cost and interest. The summons
2 shall be served upon the garnishee in any of the manners
3 described under section 652-2.5. From the time of service, the
4 garnishee shall secure in the garnishee's hands to pay [~~such~~]
5 the judgment [as] the plaintiff [shall-recover] recovers in the
6 action, [~~such~~] any of the following property or choses then in
7 the garnishee's possession or owing to the defendant as shall
8 equal the amount or value specified in the summons, except what
9 the court has expressly found to be exempt from execution
10 pursuant to section 652-1.5(d) or (f):

11 (1) The goods and effects of the defendant then in the
12 hands of the garnishee;

13 (2) Any debt then owing from the garnishee to the
14 defendant;

15 (3) Moneys of the defendant then in the possession of the
16 garnishee for safekeeping[+], after the cost of living
17 exemption, as described in paragraph (4); and

18 (4) A portion of the defendant's wages, salary, stipend,
19 commissions, annuity, or net income under a trust (in
20 this chapter included under the term "wages"),
21 remaining after the deduction of any amounts required



1 by law to be withheld and a cost of living exemption,
2 which shall be equal to the most recent
3 self-sufficiency standard for Hawaii for a one-person
4 household, as determined by the department of
5 business, economic development, and tourism pursuant
6 to section 201-3(a)(5), by withholding the amount to
7 be determined as follows: five per cent of the first
8 \$100 per month, ten per cent of the next \$100 per
9 month, and twenty per cent of all sums in excess of
10 \$200 per month, or an equivalent portion of the above
11 amount per week, whether then or thereafter to become
12 owing[-]; provided that the cost of living exemption
13 may be proactively increased upon a showing by the
14 defendant that dependents or other factors affect a
15 high cost of living, including expenses specific to
16 maintaining the defendant's place of residence;
17 provided further that, if the most recent
18 self-sufficiency standard for the State has not been
19 updated for at least five years, the cost of living
20 exemption shall be adjusted in accordance with the
21 most recent Honolulu region consumer price index.



1 The property or choses described in (1), (2), (3), and (4) of
2 this paragraph are included under the term "garnishee fund" (in
3 this chapter). The cumulative total value of the fund, in
4 advance of final judgment, shall be no more than the amount
5 specified in the summons.

6 Except as provided in section 652-1.5, the summons and
7 direction shall be sufficient notice to the defendant to enable
8 the plaintiff to bring the plaintiff's action to trial, unless
9 the defendant is an inhabitant of the State or has some time
10 resided therein, in which case a like copy shall be served
11 personally upon the defendant or left at the defendant's last
12 and usual place of abode.

13 The court shall order the garnishee fund released at the
14 hearing provided in section 652-1.5 or thereafter upon the
15 filing by the debtor with the court of a bond or bonds issued by
16 a surety or sureties licensed to do business ~~[as such]~~ in the
17 State, in an amount sufficient to pay the claim of the creditor
18 together with costs and interest, and conditioned upon judgment
19 rendered in favor of the creditor and to the extent the claim or
20 any portion thereof, together with costs and interests, if any,
21 is awarded."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

Jan Alcasio



S.B. NO. 3215

Report Title:

Garnishment; Moneys; Cost of Living Exemption

Description:

Authorizes cost of living expenses, as determined by the self-sufficiency standard for the State, to be protected from certain garnishments.

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