

A Bill for an Act Relating to Garnishment.

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

SECTION 1. The purpose of this Act is to amend the law relating to garnishment to provide for the substitution of a bond for the garnishee fund.

SECTION 2. Section 652-1, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 652-1 Garnishee process; “garnishee fund.” (a) Before judgment. When any goods or effects of a debtor are concealed in the hands of an attorney, agent, factor, or trustee (in this chapter jointly and severally included in

the term “garnishee”), so that they cannot be found to be attached or levied upon, or when any debt is due from any person (also included under the term “garnishee”) to a debtor, or when any person has in his possession for safekeeping any moneys of the debtor, any creditor may bring his action against a debtor and in his petition for process, or by subsequent ex parte motion and amendments of the complaint at any time before judgment, may request the court to insert in the process a direction to the officer serving the same to leave a true and attested copy thereof with the garnishee or at his usual place of abode and to summon the garnishee to appear personally upon the day or term appointed in the process for hearing the action or at any other time appointed by the court and then and there on oath to answer all of the following inquiries, herein inclusively referred to as the “disclosure”: (1) whether he has, or at the time the copy was served on him had, any of the goods or effects of the defendant in his hands and, if so, the nature, amount and value thereof; or (2) whether he is, or at the time of service was indebted to the defendant and, if so, the nature and amount of the debt; or (3) whether he has or at the time of service on him had, any moneys of the defendant in his possession for safekeeping and, if so, the amount thereof.

Any other provision to the contrary notwithstanding, no garnishee summons shall be issued before judgment when any debtor is in receipt of any salary, stipend, commissions, wages, annuity, or net income or portion of net income under a trust (in this chapter included under the term “wages”), from any person (also included under the term “garnishee”) until the creditor upon motion and after hearing has proved to the satisfaction of the court any of the following allegations: (1) that the defendant debtor is not a resident of the State and may depart from the State within six months from the date of the filing of the action; (2) that the defendant debtor has departed from the State; (3) that the defendant debtor has left the county of his residence with intent to avoid service of summons; or (4) that the defendant debtor, although a resident of the State, intends to depart from the State and remain absent therefrom for a period in excess of nine months. If the ruling of the court is in favor of the creditor on any of the allegations above enumerated, the creditor may then request the court to issue the garnishee summons in the manner provided for in the preceding paragraph and the garnishee in his disclosure shall on oath answer the following inquiry (also included under the term “disclosure”): whether the defendant is, or at the time of service was, in receipt from him of any wages, and, if so, the amount or rate thereof.

The summons and direction, except as to wages as provided for above, shall be signed and issued as is usual in other civil process. It shall be served according to such direction. From the time of leaving such copy, the garnishee shall secure in his hands to pay such judgment as the plaintiff shall recover in the action, the following property or choses: (1) all the goods and effects of the defendant then in the hands of the garnishee; (2) every debt then owing from the garnishee to the defendant; (3) all moneys of the defendant then in the possession of the garnishee for safekeeping; and (4) a portion of the wages of the defendant by withholding the amount to be determined as follows: five per cent of the first \$100 per month, ten per cent of the next \$100 per month, and

twenty per cent of all sums in excess of \$200 per month, or an equivalent portion of the above amount per week, whether then or thereafter to become owing. The property or choses described in (1), (2), (3), and (4) of this paragraph are included under the term "garnishee fund" (in this chapter). The cumulative total value of the fund, in advance of final judgment, shall be no more than shall be sufficient to meet the claim of the plaintiff together with cost and legal interest. Any excess in the fund shall be released by the court pursuant to subsection (d) of this section. No part of the garnishee fund may be otherwise disposed of by the garnishee except as provided in this chapter.

The summons and direction shall be sufficient notice to the defendant to enable the plaintiff to bring his action to trial, unless the defendant is an inhabitant of the State or has some time resided therein, in which case a like copy shall be served personally upon him or left at his last and usual place of abode.

The court shall order the fund garnished before judgment released upon the filing by the debtor with the court of a bond or bonds issued by a surety or sureties licensed to do business as such in the State, in an amount sufficient to pay the claim of the creditor together with costs and interest, and conditioned upon judgment rendered in favor of the creditor and to the extent the claim or any portion thereof, together with costs and interest, if any, is awarded.

(b) After judgment. Wages may be garnished after judgment at the rates specified in the third paragraph of subsection (a) of this section but without regard to the conditions set forth in the second paragraph of subsection (a) of this section. In any action brought by a creditor against a debtor, the creditor may, after judgment rendered in his favor, request the court to summon any garnishee to appear personally, upon a day appointed in the summons for hearing the cause as against the garnishee, and make full disclosure; or in any action brought in the district court by a creditor against a debtor, the creditor may, ten days after judgment rendered in his favor, file a certified copy of the judgment and his affidavit as to the amount due and unpaid on account of the judgment with the employer of the judgment debtor and the employer shall thereupon either file a disclosure within one week or shall withhold from the wages of the judgment debtor the amounts as provided herein and pay the same to the judgment creditor.

Alias summons shall also be issued and served similarly as other civil process. From the time of leaving the copy of the alias summons, any and every element of any garnishee fund in the hands of the garnishee shall be there secured to pay the judgment already recovered and may not otherwise be disposed of by the garnishee.

(c) Return by garnishee. Any garnishee summoned, whether before or after judgment, may file in the court issuing the summons, on or before the return day thereof, a return under oath containing a full disclosure. A copy of the return shall be served on the plaintiff or his attorney on or before the return day. The filing of the return shall be deemed prima facie a compliance with the summons; provided that either party to the action may, upon written notice served upon the garnishee, require the garnishee to appear and be examined under oath as to such disclosure or as to his liability as garnishee.

(d) Garnishee fund excessive. At any time after service of summons, the

court, upon the consent of the plaintiff or upon motion of the defendant or of the garnishee and notice to the plaintiff, shall determine whether the garnishee fund is excessive in amount in comparison with subsection (a) of this section or with the judgment rendered and may thereupon release the remainder thereof from being so secured.

(e) Limits on process, when. If any party named in the process as garnishee is a corporation, firm, or person having places of business in more than one judicial circuit or district in the State, the service of process upon the garnishee shall operate only to secure the garnishee fund within the circuit or circuits in which the process is served in cases where the process is issued out of a circuit court, or within the district in which process is served in cases where the process is issued out of a district court.

(f) No employer shall be liable to anyone for deductions and payments to judgment creditors from wages of judgment debtor employees, as herein provided, when he in good faith believes, or has reason to believe, that service of the certified copy of the judgment and affidavit of the judgment creditor as provided in (b) herein affects the same.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 15, 1970.)

* Edited accordingly