

ACT 144

H. B. NO. 84

A Bill for an Act Relating to District Courts, Amending Chapters 604, 633, 666 and 711 of the Hawaii Revised Statutes, and Act 188, Session Laws of 1970.

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

SECTION 1. Section 604-5, Hawaii Revised Statutes, as amended by Act 188, Session Laws of Hawaii 1970, is amended to read as follows:

“Sec. 604-5. Civil Jurisdiction. (a) Except as otherwise provided, the

district courts shall have jurisdiction in all civil actions, where the debt, amount, or damages, or the value of the property claimed, does not exceed \$5000. Attorney's commissions or fees, including those stipulated in any note or contract sued on, interest, and costs, shall not be included in computing the jurisdictional amount. Subject to subsections (b) and (c), jurisdiction under this subsection shall be exclusive when the amount in controversy, so computed, does not exceed \$500.

(b) The district courts shall try and determine all actions without a jury, subject to appeal according to law. Whenever a civil matter is triable of right by a jury and trial by jury is demanded in the manner and within the time provided by the rules of court, the case shall be transferred to the circuit court. If the demand is made in the complaint and the matter is triable of right by a jury, the action may be commenced in the circuit court even though the amount in controversy does not exceed \$500.

(c) Whenever a claim requires for its adjudication the presence of parties who cannot be served in the State, or cannot be served in a single circuit, the action may be commenced in the circuit court even though the amount in controversy does not exceed \$500, and if the action has been commenced in a district court it may be transferred to the circuit court.

(d) The district courts shall have jurisdiction in all statutory proceedings as conferred by law upon district courts.

(e) The district courts shall not have cognizance of real actions, nor actions in which the title to real estate comes in question, nor actions for libel, slander, defamation of character, malicious prosecution, false imprisonment, breach of promise of marriage, or seduction; nor shall they have power to appoint referees in any cause."

SECTION 2. Section 604-6, Hawaii Revised Statutes, as amended by Act 188, Session Laws of Hawaii 1970, is amended to read as follows:

"Sec. 604-6. Ejectment proceedings. Nothing in section 604-5 shall preclude a district court from taking jurisdiction in ejectment proceedings where the title to real estate does not come in question at the trial of the action. If the defendant is defaulted or if on the trial it is proved that the plaintiff is entitled to the possession of the premises, the court shall give judgment for the plaintiff and shall issue a writ of possession. The rules of court shall govern the stay of a writ of possession."

SECTION 3. Section 604-7, Hawaii Revised Statutes, as amended by Act 188, Session Laws of Hawaii 1970, is amended to read as follows:

"Sec. 604-7. Powers; venue. (a) The district courts may:

- (1) Administer oaths;
- (2) Subpoena and compel the attendance of witnesses from any part of the circuit and, if the subpoena is endorsed with proper words of authority by a circuit judge of the judicial circuit in which the district court is situated, from any part of the state, and compel the production of books, papers, documents or tangible things;
- (3) Enter final judgments; and alter or set aside any judgment within ten days following the date of its rendition or as provided by the rules of court;

- (4) Enforce judgments; and punish contempts according to law;
- (5) Issue garnishee summons which shall be operative as to the garnishee throughout the judicial circuit in which the district court issuing the same is situated, except that where the garnishee of a government beneficiary is the comptroller of the State, the garnishee summons may be served and shall be operative throughout the State;
- (6) In a criminal case, alter, set aside, or suspend a sentence by way of mitigation or otherwise upon motion or plea of a defendant made within thirty days after imposition of the sentence.

Every witness duly subpoenaed as provided in this section shall be allowed the same attendance and mileage fees allowed witnesses subpoenaed before the circuit courts.

(b) Any document requiring the signature of a district judge, in any cause or proceeding whatsoever in a district court, may be signed without, as well as within, the boundaries of the circuit in which the court is situated.

(c) Except as otherwise provided in this chapter or chapter 666, a summons or other writ issued by a district court may be served only in the judicial circuit in which the district court is situated.

(d) Except as otherwise provided, civil actions shall be brought in the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose, unless there are parties whose presence is required for adjudication of the claim who cannot be served in that circuit, in which case the action may be brought in the district court of any circuit in which all of the parties can be served. The venue may be changed or the case transferred as provided by sections 604-7.3 and 604-7.4.”

SECTION 4. Chapter 604, Hawaii Revised Statutes, is amended by adding a new section to be numbered 604-7.3 and to read as follows:

“**Sec. 604-7.3. Change of venue.** After the parties shall have had an opportunity to be heard, any district court may, in its discretion, upon satisfactory proof that it would be more fair and equitable to the parties thereto if any civil case pending in the court were heard in another jurisdiction, change the venue to the district court of some other circuit and order the record to be transferred thereto; provided, that any district court may, in its discretion, upon the consent of all the parties to any civil or criminal case pending in the court, change the venue to the district court of some other circuit and order the record to be transferred thereto.”

SECTION 5. Chapter 604, Hawaii Revised Statutes, is amended by adding a new section to be numbered 604-7.4 and to read as follows:

“**Sec. 604-7.4. Cure or waiver of defects.** (a) The district court of a circuit in which is commenced a civil case laying venue in the wrong circuit shall transfer the case, upon or without terms and conditions as the court deems proper, to the district court of any circuit in which it could have been brought, or if it is in the interest of justice dismiss the case.

(b) Nothing in sections 604-7 to 7.4 shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.”

SECTION 6. Chapter 604, Hawaii Revised Statutes, is amended by adding a new section to be numbered 604-7.5 and to read as follows:

“Sec. 604-7.5. Continuance of hearing or trial. If the judge of any district court, or any other district judge authorized to preside in the circuit, fails to attend any trial or hearing at the time appointed, a clerk thereof shall continue any case or matter then before the court for trial or hearing, from time to time, until the attendance of one of the district judges, but no such continuance shall be for a longer period than seven days except as otherwise ordered by the court.”

SECTION 6A. Section 604-8, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 604-8. Criminal, misdemeanors, generally. District courts shall have jurisdiction of, and their criminal jurisdiction is limited to, criminal offenses punishable by fine, or by imprisonment not exceeding one year whether with or without fine. They shall not have jurisdiction over any offense for which the accused cannot be held to answer unless on a presentment or indictment of a grand jury.

In any case cognizable by a district court as aforesaid in which the accused has the right to a trial by jury in the first instance, the district court, upon demand by the accused, for such trial by jury, shall not exercise jurisdiction over such case, but shall examine and discharge or commit for trial the accused as provided by law, but if in any such case the accused does not demand a trial by jury on the date of arraignment or within ten days thereafter, the district court may exercise jurisdiction over the same, subject to the right of appeal as provided by law.”

SECTION 6B. Section 604-9, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 604-9. Same; powers. District courts shall have power, subject to appeal according to law and except as otherwise provided in cases in which the accused has the right to and demands a trial by jury in the first instance, to try without a jury, and to render judgment in all cases of criminal offenses coming within their respective jurisdictions.”

SECTION 6C. Chapter 604, Hawaii Revised Statutes, is amended by adding a new section to be numbered 604-11.5 and to read as follows:

“Sec. 604-11.5. Same; offenses committed within the circuit. The several district courts shall have jurisdiction, except as otherwise provided, of all criminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other district court.”

SECTION 6D. Section 604-12, Hawaii Revised Statutes is repealed.

SECTION 6E. Section 604-17, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 604-17. Courts of record; testimony and proceedings. The district courts shall be courts of record. The district courts shall in all cases preserve in writing, on tape, or such other mechanical device as may be appropriate, the minutes, proceedings, and testimony of their trials, transactions, and judgments, and the facts upon which their decisions rest.”

SECTION 7. Section 604-18, Hawaii Revised Statutes is repealed.

SECTION 8. Section 604-19, Hawaii Revised Statutes is repealed.

SECTION 8A. Chapter 604, Hawaii Revised Statutes, is amended by adding a new section to be numbered 604-20 and to read as follows:

"Sec. 604-20. Powers of clerk. The clerks of the district courts shall have, within the scope of the jurisdiction of the district courts, all the powers of clerks of other courts of record, including the power to sign and enter judgments, subject to the direction of the court; administer oaths; sign and issue garnishee summons, writs of attachment, execution and possession, and other process; and take depositions."

SECTION 9. Section 633-1, Hawaii Revised Statutes is repealed.

SECTION 10. Section 633-2, Hawaii Revised Statutes is repealed.

SECTION 11. Section 633-3, Hawaii Revised Statutes is repealed.

SECTION 12. Section 633-4, Hawaii Revised Statutes is repealed.

SECTION 13. Section 633-5, Hawaii Revised Statutes is repealed.

SECTION 14. Section 633-6, Hawaii Revised Statutes is repealed.

SECTION 15. Section 633-7, Hawaii Revised Statutes is repealed.

SECTION 16. Section 633-11, Hawaii Revised Statutes is repealed.

SECTION 17. Section 633-12, Hawaii Revised Statutes is repealed.

SECTION 18. Section 633-13, Hawaii Revised Statutes is repealed.

SECTION 19. Section 633-14, Hawaii Revised Statutes is repealed.

SECTION 20. Section 633-15, Hawaii Revised Statutes is repealed.

SECTION 21. Section 633-27, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 633-27. District courts; powers. All district courts, except as otherwise provided, shall exercise jurisdiction conferred by sections 633-27 to 633-37, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to cases for the recovery of money only where the amount claimed does not exceed \$300 exclusive of interest and costs, except as provided by section 633-30. Sections 633-27 to 633-37 shall not abridge or affect the jurisdiction of the district courts to determine cases under the ordinary procedures of the court, it being optional with the parties to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court.

Actions shall be commenced in small claims division of the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose, unless service cannot be made on all of the defendants in that circuit, in which case action may be commenced in any circuit in which all of the defendants can be served."

SECTION 22. Section 633-28, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-28. Small claims, no appeal; appearance by whom. (a) Actions shall be commenced and conducted in the small claims division of the district court as provided by the rules of court. The clerk of the court shall, at the request of an individual prepare the papers required to be filed in an action in the court, but his services in the preparation of these papers shall not be available to a corporation, partnership, or association, or to any individual proprietorship. The mode of service shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit. There shall be no appeal from a judgment of the small claims division, but the court, sitting as the small claims division, may alter or set aside any judgment as provided by the rules of court.

(b) Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of another in the small claims division of the district court, but the services of an unlicensed person appearing under this subsection shall be without compensation, either by way of direct fee, contingent fee, or otherwise. In the event the services are rendered for compensation this subsection is inapplicable and the rendering of the services constitutes the unlawful practice of law, except as otherwise provided.

SECTION 23. Section 633-29, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-29. Fees and costs; waiver. The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the small claims division of the district court shall be not more than \$5. Other fees shall be as prescribed by statute or rule of court. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs.

SECTION 24. Section 633-30, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-30. Counterclaim; retention of jurisdiction. When the limit of the district court as provided by section 633-27 is exceeded in a counterclaim but within the jurisdictional limit of the court as provided by section 604-5, the action shall nevertheless remain in the small claims division of the district court and be tried therein in its entirety.”

SECTION 25. Section 633-32, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-32. Evidence.

In a case tried in the small claims division, the court shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the rules of evidence, whether or not set out by statute, except provisions relating to privileged communications.

SECTION 26. Section 633-33, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-33. Judgment for wages; oral examination; payment. When a judgment in an action pursuant to sections 633-27 to 633-37 is founded in whole or in part on a claim for wages or personal services, the court shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the court shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.”

SECTION 27. Section 633-34, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-34. Award of costs. In any action pursuant to sections 633-27 to 633-37, the award of costs is in the discretion of the court, which may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. No attorneys’ fees or commission shall be allowed or awarded under sections 607-14 and 607-17 by any judgment of the small claims division.”

SECTION 28. Section 633-35, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-35. Other rights of judgment creditor. Except as otherwise provided by sections 633-27 to 633-37, or in the rules of court, a party obtaining a judgment in the small claims division of the district court is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court.”

SECTION 29. Section 633-36, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 633-36. Forms and public information. For the more effective carrying out of sections 633-27 to 633-37, the Chief Justice, as administrative head of the judiciary department, shall cause to be published a booklet or pamphlet describing, in language readily understandable by a layman, the procedures of the small claims division of the district court, the remedies available upon judgment in the small claims division of the district court and such other information as will facilitate the utilization of the small claims procedure, and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon and after judgment.”

SECTION 30. Section 633-37, Hawaii Revised Statutes is repealed.

SECTION 31. Chapter 633, Hawaii Revised Statutes is further amended by deleting the subtitles and changing the chapter heading to read “Small Claims, District Courts”.

SECTION 31A. Section 666-9, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 666-9. Return day. The summons shall be returnable within such time as is fixed by the court in conformity with the rules of court.

SECTION 31B. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be numbered 711-2, and to read as follows:

“Sec. 711-2. Inapplicable to district courts. Notwithstanding any provision of this chapter that the same applies to courts of record, such provision shall not, without more, apply to district courts.”

SECTION 32. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 33. This Act shall take effect on January 1, 1972; provided that nothing in this Act or Act 188 of the Session Laws of 1970 shall be deemed to repeal or affect or make any change in:

- (1) Any provision of section 28-26 of the Hawaii Revised Statutes, as amended;
- (2) Any right of appeal to the circuit court for trial de novo, which could have been had under the laws in effect on December 31, 1971, provided that on that day the case was pending in a district court or the time for appeal had not expired; or
- (3) Any right of appeal to the Supreme Court from any final decision of a district court in any case finally decided prior to January 1, 1972.

(Approved May 28, 1971.)

* Edited accordingly.