

A Bill for an Act Relating to the Garnishment of Property and Choses in Action.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 651-2, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 651-2 Writ; issued when. The plaintiff, in any action upon a contract, express or implied, may, at the time of commencing the action, or at any time afterward before judgment, have the property of the defendant, or that of any one or more of several defendants, which is not exempt from execution, attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as he may recover, but no writ of attachment shall be issued (1) against the State, or any political municipal corporation, or subdivision thereof, or (2) in circumstances where garnishment is authorized under chapter 652."

SECTION 2. Section 652-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read:

"(a) Before judgment. When any goods or effects of a debtor are in the possession of an attorney, agent, factor, or trustee (in this chapter jointly and severally included in the term "garnishee"), 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 the debtor and in his petition for process, or by amendments of the complaint at any time before judgment, after meeting the requirements of section 652-1.5 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 at the time the copy was served on him, he had any of the

- goods or effects of the defendant in his hands and, if so, the nature, amount and value thereof;
- (2) Whether at the time of service, he was indebted to the defendant and, if so, the nature and amount of the debt; or
 - (3) Whether at the time of service on him, he had any moneys of the defendant in his possession for safekeeping and, if so, the amount thereof.

The summons and direction shall be signed and issued as is usual in other civil process after proceedings under section 652-1.5. The summons shall specify an amount or value of money, debt or goods or effects to be garnished which shall not exceed 120 per cent of the amount of the plaintiff's claim, including cost and interest. The summons shall be served according to such accompanying direction. Upon receipt of the summons, the garnishee shall secure in his hands to pay such judgment as the plaintiff shall recover in the action, such of the following property or choses then in the garnishee's possession or owing to the defendant as shall equal the amount or value specified in the summons, except what the court has expressly found to be exempt from execution pursuant to section 652-1.5 (d) or (f):

- (1) The goods and effects of the defendant then in the hands of the garnishee;
- (2) Any debt then owing from the garnishee to the defendant;
- (3) Moneys of the defendant then in the possession of the garnishee for safekeeping; and
- (4) A portion of the defendant's wages, salary, stipend, commissions, annuity, or net income under a trust (in this chapter included under the term "wages"), 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 the amount specified in the summons.

Except as provided in section 652-1.5, 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 garnishee fund released at the hearing provided in section 652-1.5 or thereafter 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 interests, if any, is awarded.

(b) After judgment. Wages may be garnisheed after judgment at the rate specified in 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. At the time of leaving the copy of the alias summons, any and every element of any garnishee fund then 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."

SECTION 3. Section 652-1.5, Hawaii Revised Statutes, is amended by amending subsection (d) and (f) to read as follows:

"(d) The defendant debtor shall have the right to appear and be heard at the hearing. The hearing shall be limited to a determination of whether probable validity exists to sustain the validity of the creditor's claim and whether any of the property or choses in the possession of the garnishee is, to the same degree of certainty, exempt from execution. If the court, upon consideration of the facts before it, finds that the creditor has sustained the validity of his claim, then the garnishee process under section 652-1(a) applied for shall be granted as requested or modified by the court except to the extent the defendant debtor has shown all or a portion of the property or choses in the possession of the garnishee to be exempt from execution. The clerk shall deliver to the creditor's attorney the petition, summons, and direction for service of process. If the court denies the application, only a summons and complaint shall be served. In either event, the creditor may alter the return day of the petition, summons, and direction, or the summons and complaint, as the case may be.

(f) The defendant debtor in an action in which garnishee process was allowed under subsection (e) may move to dissolve or modify the garnishee process in which event the court shall proceed to hear and determine the motion expeditiously. If the court determines at the hearing requested by the debtor that probable validity exists to sustain the validity of the creditor's claim, then the garnishee process granted shall remain in effect, except as modified pursuant to a finding that all or a portion of the property or choses in action in the possession of the garnishee is exempt from execution. If the court determines there is no such probable validity, the garnishee process shall be dissolved. An order shall be issued by the court setting forth the action it has taken."

SECTION 4. Statutory 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 5. This Act shall take effect upon its approval.

(Approved May 5, 1977.)

*Edited accordingly.