

ACT 247

H.B. NO. 2432-78

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 652-1, Hawaii Revised Statutes, is amended by amending subsection (a) 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”), remaining after the deduction of any amounts required by law to be withheld 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 of the claim or any portion thereof, together with costs and interests, if any, is awarded."

SECTION 2. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 20, 1978.)