

ACT 82

H.B. NO. 2490

A Bill for an Act Relating to Garnishment Proceedings.

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

SECTION 1. Chapter 652, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§652- Service on garnishee. Service of the copy upon the garnishee may be made in any of the manners here described, namely:

- (1) If the garnishee lives or has an office in the district in which process is issued, by the serving officer's handing a copy to the garnishee in person or leaving it in the garnishee's office in charge of some deputy or clerk or other employees or attache of the office; or
- (2) If the garnishee lives in a district other than that in which the process was issued, by the serving officer's handing a copy to the garnishee in person, or by mailing it in a sealed envelope, registered or certified, postage prepaid, return receipt requested, and addressed to the garnishee's last known home or business address.

§652- Effect of service. (a) In case of service upon the garnishee, the serving officer's certificate of service or, if by mail, a copy of the return receipt shall be prima facie proof of the service.

(b) For purposes of this chapter, service is effective from the time when the summons is handed to or left in the office of the garnishee, or reaches the garnishee or the garnishee's office by mail.”

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

“(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 the person’s possession for safekeeping any moneys of the debtor, any creditor may bring the creditor’s action against the debtor and in the creditor’s 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 the garnishee’s usual place of abode] that service of a true and attested copy thereof be made upon the garnishee in any of the manners described under section 652- 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 the garnishee, the garnishee had any of the goods or effects of the defendant in the garnishee’s hands and, if so, the nature, amount and value thereof;
- (2) Whether at the time of service, the garnishee was indebted to the defendant and, if so, the nature and amount of the debt; or
- (3) Whether at the time of service on the garnishee, the garnishee had any moneys of the defendant in the garnishee’s 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] one hundred twenty 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,] upon the garnishee in any of the manners described under section 652- . From the time of service, the garnishee shall secure in the garnishee’s 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 the plaintiff's 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 the defendant or left at the defendant's 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 interest, 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 the creditor's 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 the creditor's favor, file a certified copy of the judgment and the creditor's 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,] upon the garnishee in any of the manners described under section 652- . At the time of service, 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 653-6, Hawaii Revised Statutes, is amended to read as follows:

"§653-6 Garnishee [process.] summons. (a) Any provision to the contrary notwithstanding, no garnishee summons shall be issued before judgment 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 filing of the action;
- (2) That the defendant debtor has departed from the State;
- (3) That the defendant debtor has left the county of the defendant debtor's 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 before judgment or if the creditor has received judgment in the creditor's favor on the creditor's complaint, the creditor may then request the court issuing the garnishee summons to direct [the officer serving the same to leave a true copy thereof, which shall be attested by the sheriff, the sheriff's deputy, a licensed process server or other serving officer, with] that service of a true and attested copy be made in any of the manners described under section 653-7 upon the comptroller of the State, or of the political or municipal subdivision of the State, or other officer through whom the salary, stipend, or wages of the debtor is sought to be attached, who shall [herein be called] be referred to as the garnishee[.] for purposes of this chapter.

(b) In any action brought in the district court by a creditor upon¹ a debtor, the creditor, ten days after judgment rendered in the creditor's favor, in lieu of requesting the issuance of a garnishee summons, may file a certified copy of the judgment and the creditor's affidavit as to the amount due and unpaid on account of the judgment with the comptroller of the State, or of the political or municipal subdivision of the State or other officers through whom the salary, stipend, or wages of the judgment debtor is paid, and upon that filing the comptroller or other officer shall withhold from the wages of the judgment debtor the amounts provided in section 652-1(a) subject to payment in good faith as provided in section 652-1(f) and pay the same to the judgment creditor."

SECTION 4. Section 653-7, Hawaii Revised Statutes, is amended to read as follows:

"§653-7 Service on garnishee. Service of the copy upon the garnishee may be made in any of the manners here described, namely:

- (1) If the garnishee lives[,], or has an office in the district in which process is issued, by the [officer] officer's handing a copy to the garnishee in person[,], or [by] leaving it in the garnishee's office[,], in charge of some deputy or clerk or other employees or attache of the office; [if] or
- (2) If the garnishee lives in a district other than that in which the process was issued, by an officer's handing a copy to the garnishee in person, or by [depositing it in the nearest post office,] mailing it in a sealed envelope, registered [and] or certified, postage prepaid, return receipt requested, and addressed to the [officer at the officer's accustomed post office.] garnishee's home or business address."

SECTION 5. Section 653-8, Hawaii Revised Statutes, is amended to read as follows:

"§653-8 Effect of service. (a) In case of service upon the garnishee, [if served by an officer,] the serving officer's certificate of service[, specifying the particulars thereof,] or, if by mail, a copy of the return receipt shall be prima facie proof of the service; and shall be ample for the purposes of section 653-11,].

(b) For purposes of this chapter, service is effective from the time when the copy is handed to, or left in the office of the garnishee, or reaches the garnishee or the garnishee's office by mail."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval.

(Approved May 27, 1992.)

Notes

1. Prior to amendment “against” appeared here.
2. Edited pursuant to HRS §23G-16.5.