

ACT 200

H.B. NO. 1089

A Bill for an Act Relating to Court Costs and Fees.

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

SECTION 1. Section 607-14, Hawaii Revised Statutes, is amended to read as follows:

**“§607-14 Attorneys’ fees in actions in the nature of assumpsit, etc. (a)**  
In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney’s fee, there shall be taxed as attorneys’ fees, [in addition to the attorneys’ fees otherwise taxable by law,] to be paid by the losing party and to be included in the sum for

which execution may issue, a fee [which] that the court determines to be reasonable [but which shall not exceed the amount obtainable under the following schedule:

- 25 per cent on first \$1,000 or fraction thereof.
- 20 per cent on second \$1,000 or fraction thereof.
- 15 per cent on third \$1,000 or fraction thereof.
- 10 per cent on fourth \$1,000 or fraction thereof.
- 5 per cent on fifth \$1,000 or fraction thereof
- 2.5 per cent on any amount in excess of \$5,000.]

provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action and the amount of time the attorney is likely to spend to obtain a final written judgment, or, if the fee is not based on an hourly rate, the amount of the agreed upon fee. The court shall then tax attorneys' fees, which the court determines to be reasonable, to be paid by the losing party; provided that this amount shall not exceed twenty-five per cent of the judgment.

Where the note or other contract in writing provides for a fee of twenty-five per cent or more, or provides for a reasonable attorney's fee, not more than twenty-five per cent shall be allowed.

Where the note or other contract in writing provides for a rate less than twenty-five per cent, not more than the specified rate shall be allowed.

Any law to the contrary notwithstanding, no such attorney's fee shall be allowed to the plaintiff by any court:

- (1) If prior to or at the time the debt was incurred, the debtor did not sign an instrument in writing which provided for the payment of an attorney's fee; and
- (2) If prior to or at the time the debt was incurred, the debtor did sign an instrument in writing which provided for the payment of an attorney's fee and such instrument in writing contains within its principal amount any attorney's fee from a prior debt.

The above fees provided for by this section shall be assessed on the amount of the judgment exclusive of costs and all [attorney's] attorneys' fees obtained by the plaintiff, and upon the amount sued for if the defendant obtains judgment. [The fees provided for by this section shall not be taxed in any action where the plaintiff obtains a judgment which includes attorneys' fees upon a promissory note or other evidence of indebtedness, when the promissory note or other evidence of indebtedness contains a provision for the recovery of costs of collection or attorneys' fees.]'

SECTION 2. Section 607-17, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 652-13, Hawaii Revised Statutes, is amended to read as follows:

**“§652-13 Fees and costs.** Every garnishee shall be allowed [§3] \$10 in cases in the circuit courts and [§1] \$10 in cases in the district courts for filing a return on or before the return day or for appearance on the return day, as the case may be, and, in special or exceptional cases in which the court may deem it proper, such further sums as the court may deem reasonable for counsel fees and other necessary expenses. The allowance for return or appearance of the garnishee shall be deposited with the clerk of the court in order to hold the garnishee and shall be paid to the garnishee when the garnishee makes the garnishee's return and files the same in court or when the garnishee makes the garnishee's appearance in court. If the garnishee fails to make and file a return or to make the garnishee's appearance in court the garnishee shall thereby forfeit the garnishee fees [herein] provided [for.] in this section. The garnishee, if discharged, may collect from the plaintiff on

execution any unpaid allowances or, if held, may retain the same out of the goods, effects, or credits of the defendant in the garnishee's hands.

As between the plaintiff and defendant, if the garnishee is discharged, the costs of the garnishment proceeding[, including \$1 for each copy of summons and \$1 for each service of summons,] shall be taxed against the plaintiff; but, if the garnishee is held, such costs and all such allowances as have been paid by the plaintiff to the garnishee shall be taxed against the defendant.”

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

**Note**

1. Edited pursuant to HRS §23G-16.5.