

ACT 138

H.B. NO. 912

A Bill for an Act Relating to Service of Process.

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

SECTION 1. The legislature finds that the small claims court was instituted in order to provide the public with a simplified, direct, and low cost access to the legal system. Service of process for these actions was also simplified by allowing service by registered or certified mail as well as through the sheriff’s office or licensed process server. However, in certain instances, service by mail is ineffective, such as the situation in which a defendant fails to pick up the mail or refuses to sign for certified mail. While service through a sheriff or process server is still an option, it is a costly one that is not appropriate for those matters when the monetary value of the claim may be very low. Therefore, the purpose of this Act is to allow service of process to be made by the parties themselves in small claims matters.

SECTION 2. Section 633-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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, shall prepare the papers required to be filed in an action in the court, but the clerk’s 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]:

- (1) As provided by law or rule of court for cases in the district courts[, or, as]; provided that for any small claims action, service may be made by one of the parties to the action by means of personal service to the other parties, on the condition that:
 - (A) The party being served signs that party’s name to indicate actual receipt of service; or
 - (B) A competent witness, who is not an employee, family member, or agent of the plaintiff appears at a hearing on the matter or provides a notarized affidavit testifying that personal service on the party sought to be served was accomplished in the witness’s presence;
- (2) As to actions arising under paragraphs (1) and (3) of section 633-27(a), by registered mail or by certified mail with return receipt signed by the addressee showing delivery within the circuit[, or, as]; or
- (3) As to actions arising under paragraph (2) of section 633-27(a), by registered mail or by certified mail with return receipt signed by the addressee showing delivery at any place within or without the State.

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.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 16, 1997.)