

ACT 142

H.B. NO. 2601

A Bill for an Act Relating to the Service of Process.

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

SECTION 1. Section 603-29, Hawaii Revised Statutes, is amended to read as follows:

**“§603-29 Order to show cause.** Whenever a complaint has been filed in circuit court alleging leased or rented personal property the value of which is \$5,000 or more, has been retained by the defendant fourteen days after the termination of the lease or rental contract, either by passage of time or by reason

of any default under the terms and conditions of the lease or rental contract, the plaintiff may petition the court for an order to show cause.

Upon the filing of the petition with a copy of the lease or rental contract and an affidavit sworn to by the plaintiff or some competent affiant setting forth a statement of facts sufficient to show the termination of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct but not later than ten days from the date of service of the order to show cause. The order to show cause shall also provide that if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, ~~[or the sheriff's]~~ deputy~~;~~ sheriff, or person authorized by the rules of court, commanding the sheriff ~~[or],~~ deputy sheriff, or other person authorized by the rules of court to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the circuit courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit."

SECTION 2. Section 604-6.2, Hawaii Revised Statutes, is amended to read as follows:

**"§604-6.2 Order to show cause.** Upon the filing of a complaint with a copy of a lease or rental contract and an affidavit sworn to by the plaintiff or some competent affiant setting forth a statement of facts sufficient to show that the leased or rented personal property has been in the defendant's possession at least fourteen days after the termination of the lease or rental contract, either by passage of time or by reason of any default under the terms and conditions of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct, but not later than ten days from the date of service of the order to show cause. The order to show cause shall also provide that, if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, ~~[or the sheriff's]~~ deputy~~;~~ sheriff, or other person authorized by the rules of court commanding the sheriff ~~[or],~~ deputy sheriff, or a person authorized by the rules of court to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the State."

SECTION 3. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

**"(d) ~~[Sheriff's or] Fees of sheriff, deputy sheriff, police [officer's fees:] officer, or other person authorized by the rules of court:~~**

- (1) For serving any criminal summons, warrant, attachment, or other criminal process, \$30 effective July 1, 2001. This fee is payable to

a sheriff, deputy sheriff, or police officer. Service of criminal summons, warrant, attachment, or other criminal process shall be made only by persons authorized to serve criminal summons in accordance with rules of court.

- (2) For serving any civil summons, warrant, attachment, or other civil process, \$25 effective July 1, 2001.
- (3) For every copy of an attachment and inventory of the property attached, served upon the defendant, \$2.
- (4) For serving any execution, 12 cents for every \$1 collected up to \$500, and 7 cents for every \$1 over \$500.
- (5) For serving: subpoena, \$25; and subpoena duces tecum or garnish-ee summons, \$15 effective July 1, 2001.
- (6) For every mile of travel, more than one, in serving any process, 40 cents; provided that:
  - (A) ~~no~~ No allowance shall be made where the serving ~~officer~~ individual uses a conveyance furnished the serving ~~officer~~ individual by the State, or any political or municipal subdivision thereof;
  - (B) ~~where~~ Where the serving ~~officer~~ individual serves more than one person in the course of one trip, the serving ~~officer~~ individual shall not charge, in the aggregate for all services, more than the mileage for the entire trip; and
  - (C) ~~as~~ As far as practicable, in order to minimize the mileage fees for the service, the sheriff or other chief of the serving officers, or other person authorized by the rules of court, where service of process is to be made upon an island other than that upon which is situated the court issuing the process, shall cause the process to be transmitted to ~~a~~ the sheriff, deputy~~;~~ sheriff, the chief of police, a person authorized by the rules of court, or other serving ~~officer~~ individual upon the island of service, who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the ~~officer~~ individual actually making the service or to the ~~officer's~~ individual's superior.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff ~~or~~, deputy sheriff, police officer, or other person authorized by the rules of court performing the service."

SECTION 4. Section 607-8, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

**"§607-8 [Sheriff's or] Fees of sheriff, serving or levying [officer's fees] officer, or other person authorized by the rules of court in circuit court, intermediate appellate court, or supreme court.** (a) For all necessary travel in making the service, per mile for every mile more than one...40 cents provided that:

- (1) No allowance shall be made where the serving ~~officer~~ individual uses a conveyance furnished the serving ~~officer~~ individual by the State, or any political or municipal subdivision thereof;
- (2) Where the serving ~~officer~~ individual serves more than one person in the course of one trip, the serving ~~officer~~ individual shall not charge, in the aggregate for all services more than the mileage for the entire trip; and

- (3) As far as practicable, in order to minimize the mileage fees for the service, the sheriff or other chief of the serving officers, or other person authorized by the rules of court where service of process is to be made upon an island other than that upon which is situated the court issuing the process, shall cause the process to be transmitted to [a] the sheriff, deputy[-] sheriff, the chief of police, other person authorized by the rules of court, or other serving [officer] individual upon the island of service who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the [officer] individual actually making the service or to the [officer's] individual's superior.

For serving criminal summons or any other criminal process except a subpoena, for each person served therewith ..... \$30 effective July 1, 2001. Service of criminal summons or any other criminal process shall be made only by persons authorized to serve criminal summons in accordance with rules of court.

For serving civil summons or any other civil process, except a subpoena or a garnishee summons, for each person served therewith ..... \$25 effective July 1, 2001.

For serving: subpoena, for each person, \$25; and subpoena duces tecum or garnishee summons, for each person ..... \$15 effective July 1, 2001.

For returning as unserved after due and diligent search any process when it has been found that the person to be served has left the State ..... \$5 effective July 1, 2001.

For serving any execution or other process for the collection of money, for every dollar collected up to \$1,000 ..... 5 cents.

And for every dollar over \$1,000 ..... 2-1/2 cents.

All fees paid to any printer for publishing an advertisement of the sale of any property.

For every bill of sale ..... \$2.

For executing and acknowledging a deed pursuant to a sale of real estate to be paid by the grantee in the deed..... \$8.

For drawing any bond required by law..... \$2.

For serving writ of possession or restitution, putting any person entitled into the possession of premises, and removing a tenant pursuant to order of court..... \$25.

Together with all necessary expenses incurred by the [officer] individual serving the writ, incident to the eviction.

For selling any property on an order from the court other than an execution, the same allowance as for service and sales by execution.

The fees for service of executions, attachments, and collection of judgments, together with all costs incurred after judgment rendered, not included in the judgment, in all courts of the State, shall be collected in addition to the sum directed to be levied and collected in the writ.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff [~~or~~], deputy sheriff, police officer, or other person authorized by the rules of court performing the service."

SECTION 5. Section 633-8, Hawaii Revised Statutes, is amended to read as follows:

**“§633-8 Order to show cause.** Upon the filing of a complaint with a copy of a lease or rental contract and an affidavit sworn to by the plaintiff or

some competent affiant setting forth a statement of facts sufficient to show that the leased or rented personal property has been in the defendant's possession at least fourteen days after the termination of the lease or rental contract, either by passage of time or by reason of any default under the terms and conditions of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct, but not later than five days from the date of service of the order to show cause. The order to show cause shall also provide that, if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, ~~[or the sheriff's]~~ deputy~~;~~ sheriff, or other person authorized by the rules of court commanding the sheriff ~~[or the sheriff's]~~, deputy sheriff, or other person authorized by the rules of court to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit."

SECTION 6. Section 634-11, Hawaii Revised Statutes, is amended to read as follows:

**"§634-11 Interpleader; sheriff's application for order~~[-]~~ by sheriff or other person authorized by the rules of court.** When, in the execution of process against goods and chattels issued by or under the authority of the courts of the State, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process had issued, whereby the ~~[sheriffs and]~~ sheriff, deputy sheriffs, other officers, or persons authorized by the rules of court are exposed to the hazard and expense of actions, any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof, it shall be lawful for the court, out of which the execution shall have issued, or any judge thereof, upon application of the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, made before or after the return of such process, and as well before as after any action brought against the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, to call before it or the judge by rule, order, or summons, as well the party issuing such process as the party making the claim. Thereupon the court or judge shall, for the adjustment of the claims and the relief and protection of the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, make such rules, orders, and decisions as shall appear to be just according to the circumstances of the case. The costs of all such proceedings shall be in the discretion of the court or judge."

SECTION 7. Section 634-12, Hawaii Revised Statutes, is amended to read as follows:

**"§634-12 Sale of property seized on execution, when.** When goods or chattels have been seized in execution by the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, under process of any court, and some third person claims to be entitled under a bill of sale, chattel mortgage, or otherwise, to the goods and chattels by way of security for a debt,

the court or a judge may order a sale of the whole or part thereof, upon such terms as to the payment of the whole or part of the secured debt or otherwise as it or the judge shall think fit; and may direct the application of the proceeds of sale in such manner and upon such terms as to the court or judge may seem just.”

SECTION 8. Section 634-22, Hawaii Revised Statutes, is amended to read as follows:

**“§634-22 Return.** In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff ~~[or the sheriff’s deputies]~~, deputy sheriff, or any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j), a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the officer making the service. If the officer fails to make service the officer, in like manner, shall endorse the reason for the officer’s failure and sign this record. When service is made by a person specially appointed by the court, or a person authorized by the rules of court, the person shall make affidavit of that service.

The record or the affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the officer or person making service, in which case the officer or person shall be notified to appear for examination.”

SECTION 9. Section 651-1, Hawaii Revised Statutes, is amended to read as follows:

**“§651-1 General provisions.** This ~~[part]~~ chapter shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may by the provisions of this ~~[part]~~ chapter be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase “police officer”, as used in this ~~[part]~~ chapter, means the director of public safety or the director’s duly authorized representative, any chief of police or subordinate police officer, or a person authorized by the rules of court. Nothing in this ~~[part]~~ chapter shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which the judge’s court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge.”

SECTION 10. Section 666-11, Hawaii Revised Statutes, is amended to read as follows:

**“§666-11 Judgment; writ of possession.** If it is proved to the satisfaction of the court that the plaintiff is entitled to the possession of the premises, the plaintiff shall have judgment for possession, and for the plaintiff’s costs. Execution shall issue accordingly. The writ of possession shall issue to the sheriff ~~[or to a]~~, deputy sheriff, police officer, or other person authorized by the rules of court of the circuit where the premises are situated, commanding the sheriff ~~[or]~~, deputy sheriff, police officer, or other person authorized by the rules of court to remove all persons from the premises, and to put the plaintiff, or the plaintiff’s agent, into the full possession thereof.”

## ACT 142

SECTION 11. Section 666-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the tenant is unable to comply with the court’s order under subsection (a) in paying the required amount of rent to the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff ~~[or to a]~~, deputy sheriff, police officer, or other person authorized by the rules of court of the circuit where the premises are situated, ordering the sheriff ~~[or]~~, deputy sheriff, police officer, or other person authorized by the rules of court to remove all persons and possessions from the premises, and to put the landlord, or the landlord’s agent, into full possession of the premises.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 20, 2012.)