

CHAPTER 653
GARNISHMENT OF GOVERNMENT BENEFICIARIES

Section

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Note

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

Rules of Court

See HRCF rules 64, 69; DCRCP rules 64, 69. Service, see HRCF rule 4; DCRCP rule 4.

Case Notes

Validity of prejudgment replevin provisions authorizing taking of property without affording prior opportunity to be heard. 407 U.S. 67 (1972).

" **§653-1 Government beneficiary defined.** Any officer or employee, or other person in the service of the government of the State, or of any political or municipal subdivision thereof, or in receipt of, or entitled to a salary, stipend, or wages, from the State, or any department, board, or bureau thereof, or from any political or municipal subdivision of the State, shall for the purposes of this chapter, and of any proceedings hereunder, be known and described as a government beneficiary, hereinafter denominated such beneficiary. [L 1890, c 50, §1; am L 1903, c 53, §1; am L 1921, c 66, §1; RL 1925, §2845; RL 1935, §4290; RL 1945, §10321; RL 1955, §238-1; HRS §653-1]

Cross References

Garnishment proceedings against the retirement system, see §88-92.

Attorney General Opinions

Monies owed by State to vendor under public contract not garnishable. Att. Gen. Op. 72-12.

Case Notes

But for this statute, garnishment would not lie, as there is no privity of contract between disbursing officer and beneficiary. 2 H. 80 (1858).

Contractor to whom government owes balance for building bridge is not government beneficiary. 9 H. 195 (1893).

No garnishee process against Territory, except as provided by this chapter. 16 H. 106, 109 (1904).

Every government official, legislative, judicial, or executive included if entitled to salary. 19 H. 428, 429 (1909); 31 H. 1014 (1931).

Not violative of Fourteenth Amendment of U.S. Constitution. 19 H. 428, 430 (1909).

Municipal corporation like private corporation subject to process of garnishment. 23 H. 564, 570 (1916).

Lessees of Hawaiian Homes Commission, which holds proceeds of pineapple sales, are not government beneficiaries within meaning of this section, but the proceeds may be reached by a creditor's bill. 37 H. 8, 12 (1944).

" **§653-2 Attachment of salary, etc.** The salary, stipend, or wages of the beneficiary may be attached for, and applied in the payment of the beneficiary's debts, in the manner prescribed in this chapter. [L 1890, c 50, §2; am L 1921, c 66, §1; RL 1925, §2847; RL 1935, §4293; RL 1945, §10322; RL 1955, §238-2; HRS §653-2; gen ch 1985]

" **§653-3 Exemptions; pensions.** No pension to which any person is entitled from the State, or any municipal subdivision thereof, shall be subject to taxes nor to garnishment, attachment, or execution upon or in any suit, action, or proceeding at law instituted by any person or by the State or by any municipal subdivision thereof. [L 1921, c 66, §1; RL 1925, §2846; RL 1935, §4291; RL 1945, §10323; RL 1955, §238-3; HRS §653-3]

Cross References

Garnishment proceedings against the retirement system, see §88-92.

" **§653-4 Further exemption.** The wages received by every person receiving less than \$60 per month when paid from any unemployment work relief fund, the expenditure of which is under the control of any state commission, board, or other agency, or under the control of any county or any commission, board, or other agency of any county shall be exempt from garnishment, attachment, or any other judicial or statutory proceedings for the taking, sequestration, or withholding thereof for any purpose whatsoever, including payment of taxes. [L 1933, c 171, §4; RL 1935, §4292; am L 1935, c 63, §1; RL 1945, §10324; RL 1955, §238-4; HRS §653-4]

" **§653-5 Complaint.** The creditor of such beneficiary may bring the creditor's action against the creditor's debtor, and

in the creditor's complaint allege, to the best of the creditor's knowledge:

- (1) The office or employment held or pursued by the beneficiary, in or under what department, board, or bureau of government or subdivision of the State, where the beneficiary is resident and where chiefly so employed;
- (2) The amount of the monthly salary, wages, or stipend or the annual salary of the beneficiary; and
- (3) The name of the officer through whom the beneficiary is accustomed or entitled to draw the beneficiary's salary, stipend, wages, or annuity. [L 1890, c 50, §3; am L 1903, c 53, §2; am L 1921, c 66, §1; RL 1925, §2848; RL 1935, §4294; RL 1945, §10325; RL 1955, §238-5; HRS §653-5; gen ch 1985]

Revision Note

In paragraph (2), "and" added after ending punctuation pursuant to §23G-15.

Case Notes

Summons should not be quashed because declaration omits some statutory allegations if enough remains. 19 H. 387 (1909).

Statute authorizes naming auditor of Territory and clerk of senate in garnishee process. 19 H. 428, 430 (1909).

Cited: 23 H. 564, 566 (1916); 33 H. 602, 604 (1935).

" **§653-6 Garnishee 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 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 be referred to as the garnishee for purposes of this chapter.

(b) In any action brought in the district court by a creditor upon 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. [L 1890, c 50, §4; am L 1903, c 53, §3; am L 1921, c 66, §1; RL 1925, §2849; RL 1935, §4295; RL 1945, §10326; RL 1955, §238-6; am L 1959, c 65, §6; am L 1961, c 167, §4; am L 1963, c 85, §3; HRS §653-6; gen ch 1985; am L 1989, c 123, §5 and c 211, §10; am L 1990, c 281, §11; am L 1992, c 82, §3]

Case Notes

Cited: 33 H. 602, 604 (1935).

" **§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'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 an 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 home or business

address. [L 1890, c 50, §5; RL 1925, §2850; RL 1935, §4296; RL 1945, §10327; am L 1955, c 197, §2; RL 1955, §238-7; HRS §653-7; gen ch 1985; am L 1992, c 82, §4]

Case Notes

Disbursing officer of senate may be held as garnishee. 10 H. 260 (1896).

Auditor, unless within exceptions, is properly a garnishee for purpose of sequestering salary of territorial employee. 33 H. 602 (1935).

Cited: 34 H. 328, 330 (1937).

" **§653-8 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 copy is handed to, or left in the office of the garnishee, or reaches the garnishee or the garnishee's office by mail. [L 1890, c 50, §6; RL 1925, §2851; RL 1935, §4297; RL 1945, §10328; RL 1955, §238-8; HRS §653-8; gen ch 1985; am L 1992, c 82, §5]

" **§653-9 Service on beneficiary.** Service of process upon the beneficiary may be made as has been usual or shall be provided in the case of civil actions in general. [L 1890, c 50, §7; RL 1925, §2852; RL 1935, §4298; RL 1945, §10329; RL 1955, §238-9; HRS §653-9]

Case Notes

Cited: 34 H. 328, 330 (1937).

" **§653-10 Superiors and successors of garnishee.** The obligations and inhibitions imposed upon the garnishee shall be equally binding upon the garnishee's official superiors and successors, to whose notice the fact shall come, of the service upon the garnishee. [L 1890, c 50, §9; RL 1925, §2854; RL 1935, §4299; RL 1945, §10330; RL 1955, §238-10; HRS §653-10; gen ch 1985]

" **§653-11 Answer; amount sequestered.** It shall not be incumbent upon the garnishee to appear in any court or file any answer to the process, but the trial of the action may proceed, in all respects, as though the garnishee had not been included in the action. But from the time of the service of the copy on

the garnishee, the garnishee shall withhold from the salary, stipend, or wages, which is then or shall thereafter become due, owing or payable to the beneficiary named in the copy 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.

The garnishee shall continue to withhold such amount or amounts until the action against the beneficiary has been withdrawn or dismissed, or the judgment against the beneficiary therein, if any, has been fully paid, with legal interest; either of which event shall be certified by the court in or before which the action has been pending. The amount or amounts so withheld shall be deemed sequestered in the treasury of the State, or the political or municipal subdivisions thereof from the time of the service of the copy on the garnishee; provided that no more shall be thus sequestered in advance of final judgment than shall be sufficient to meet the demand of the plaintiff in the action. It shall be unlawful for the garnishee to draw, sign, or issue or permit or cause to be drawn, signed, or issued any warrant payable to the order of the beneficiary or to any other person designated by the beneficiary for the amount or amounts so sequestered. [L 1890, c 50, §8; am L 1903, c 53, §4; am L 1921, c 66, §1; RL 1925, §2855; am L 1933, c 171, §1; RL 1935, §4300; am L 1939, c 212, §3; RL 1945, §10331; RL 1955, §238-11; am L 1959, c 65, §7; HRS §653-11; gen ch 1985]

Cross References

Federal restrictions on garnishment, see Pub. L. 90-321, Title III (15 U.S.C. §1671 et seq.).

Case Notes

Applies equally to all employees and officials of legislative, judicial, or executive departments. 19 H. 428 (1909).

General scheme of §657-5 and this section is to terminate a judgment when judgment is actually paid or presumed to be paid as a matter of law. 82 H. 197, 921 P.2d 117 (1996).

Cited: 10 H. 260, 261 (1896); 24 H. 16, 17 (1917).

" **§653-12 Certificate furnished garnishee.** After trial or hearing of the action, either in the original or any appellate court, the party prevailing in the trial or hearing shall obtain from the court in or before which the trial or hearing was had, a certificate, which shall sufficiently describe the action to

apprise the garnishee of its identity, and shall state the nature of the judgment if any rendered therein, whether any appeal from or exceptions to the judgment were noted at the time of rendering the judgment, or whether the action had been voluntarily withdrawn or discontinued, and the certificate shall be immediately furnished to the garnishee. [L 1890, c 50, §10; RL 1925, §2856; RL 1935, §4301; RL 1945, §10332; RL 1955, §238-12; HRS §653-12]

Case Notes

Cited: 18 H. 593 (1908).

" **§653-13 Effect of discontinuance, appeal, exceptions.** In case of the withdrawal or discontinuance of the action, or of the rendition of judgment therein wholly favorable to the beneficiary, from or to which judgment no appeal or exceptions have been noted at the time when it was rendered, and the certification thereof to the garnishee, the inhibitions placed upon the garnishee by the service of the copy shall be void, and of no further effect. But in case of judgment being rendered for either party in the action from or to which an appeal or exceptions have been noted at the time, the garnishee shall continue bound by the service until the result of the appeal or exceptions have been duly certified to the garnishee as hereinbefore provided. [L 1890, c 50, §11; RL 1925, §2857; RL 1935, §4302; RL 1945, §10333; RL 1955, §238-13; HRS §653-13; gen ch 1985]

" **§653-14 Warrants issued to plaintiff, when.** In case there is certified to the garnishee a judgment for the plaintiff, from or to which no appeal or exception, at the time of its rendition, has been noted, it shall be incumbent upon the garnishee to draw, sign, and deliver to the plaintiff a warrant or warrants payable to the order of the plaintiff for such sum or sums as theretofore have been sequestered and not drawn against in pursuance of the action if the judgment equals or exceeds such sum or sums. If the amount so sequestered and not drawn against does not suffice to extinguish the judgment, then the sequestration and delivery to the plaintiff by the garnishee of a warrant payable to the order of the plaintiff shall continue from week to week, or from month to month, until the judgment, with legal interest, is fully paid, or until the beneficiary quits the service of and dissolves the beneficiary's relation to the government upon which the sequestration is founded. [L 1890, c 50, §12; am L 1903, c 53, §5; RL 1925,

§2858; RL 1935, §4303; RL 1945, §10334; RL 1955, §238-14; HRS §653-14; gen ch 1985]

Case Notes

Duty to issue. 24 H. 16 (1917).

" **§653-15 Actions, precedence.** In case of successive actions being brought against any beneficiary, in which any portion of the beneficiary's salary, stipend, or wages is sought to be sequestered, as provided herein, precedence shall be given by the garnishee to one whose process is first served upon the garnishee; and if two or more such processes are simultaneously served upon the garnishee, they shall be entitled to precedence in the order of the priority of their issue by the court or courts from which they respectively emanated, subject to section 653-16. [L 1890, c 50, §14; am L 1921, c 66, §1; RL 1925, §2859; RL 1935, §4304; RL 1945, §10335; RL 1955, §238-15; HRS §653-15; gen ch 1993]

" **§653-16 Same; priority of payments.** The order of precedence established by section 653-15 shall not be disturbed by the fact of a later action being carried to final judgment sooner than the earlier in point of such service upon the garnishee, but in such case the garnishee shall pay or cause to be paid on account of the earlier judgment only such sums as are payable upon the judgment from the amounts which shall thereafter become due and payable to the beneficiary. All amounts sequestered on account of the earlier action shall be held to await the result thereof, when, if final judgment passes against the beneficiary, the amount sequestered and held shall be applied in payment of the judgment. In case such amounts do not suffice to satisfy the judgment, then all judgments obtained in later actions shall be again postponed to that in the earlier action, until it is satisfied. [L 1890, c 50, §15; RL 1925, §2860; RL 1935, §4305; RL 1945, §10336; RL 1955, §238-16; HRS §653-16]

" **§653-17 Warrants charged against beneficiary.** All warrants drawn and delivered on account of any judgment, as hereinbefore provided, shall be noted and charged against the beneficiary in like manner as if they had been drawn and delivered to the beneficiary personally on account of such salary, stipend, wages, or annuity. [L 1890, c 50, §16; am L 1903, c 53, §6; am L 1921, c 66, §1; RL 1925, §2861; RL 1935, §4306; RL 1945, §10337; RL 1955, §238-17; HRS §653-17; gen ch 1985]