

A Bill for an Act Relating to Small Claims and Amending Chapter 229, Revised Laws of Hawaii 1955.

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

SECTION 1. Chapter 229, Revised Laws of Hawaii 1955, is amended by deleting sections 229-13 to 229-18 and substituting in lieu thereof sections to read as follows:

**“Sec. 229-13. District magistrates; powers.** All district magistrates, except as otherwise provided, shall exercise jurisdiction conferred by this subtitle, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the Small Claims Division of the District Court; provided that the jurisdiction of the court when sitting as a Small Claims Division of the District Court shall be confined to cases for the recovery of money only where the amount claimed does not exceed \$300 exclusive of interest, attorneys’ fees and costs. This subtitle shall not abridge or affect the jurisdiction of the district magistrates to determine cases under the ordinary procedures of the court, it being optional with the parties to elect the procedure of the Small Claims Division of the District Court or the ordinary procedures.

Actions shall be commenced and maintained in Small Claims Division of the District Court as follows:

- (1) When a defendant has contracted to perform an obligation in a particular judicial district, an action founded on that obligation may be commenced and maintained either in the judicial district where the obligation is to be performed if the district is in the same county where the defendant resides, or in which the defendant, or any such defendant, resides at the commencement of the action.
- (2) When the action is for injury to person, or to personal property, either the judicial district where the injury occurs if the district is in the same county where the defendant resides, or where the defendant, or any

such defendant, resides at the commencement of the action, shall be the proper judicial district for the trial of the action.

- (3) In all other cases, actions shall be commenced and maintained in the judicial district in which the defendant, or any such defendant, resides at the commencement of the action.

**Sec. 229-14. Small claims procedure.** (a) Actions shall be commenced in the Small Claims Division of the District Court by the filing of a statement of claim, in concise form and free of technicalities. All claims based on a contract, expressed or implied, shall be verified by the claimant, whether as a party plaintiff or counterclaimant, or by his agent, by oath or affirmation in the form herein provided, or its equivalent. The clerk of the court shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the court, but his services shall not be available to a corporation, partnership, or association, or to any individual proprietorship in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be as provided by law, or by registered mail or by certified mail with return receipt.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned with the signature thereon of the party to whom addressed, the clerk shall attach it to the original statement of claim, and it shall constitute prima facie evidence of personal service upon the defendant.

(c) When notice is served personally, the server shall make proof of service by affidavit sworn to before the clerk of the court or before any notary public, showing the time and place of the service.

(d) The actual cost of service shall be taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

IN THE SMALL CLAIMS DIVISION OF THE DISTRICT COURT OF  
COUNTY OF \_\_\_\_\_, STATE OF HAWAII  
..... )  
Plaintiff  
..... )  
Address )  
vs. )  
..... )  
Defendant )

**STATEMENT OF CLAIM**

(Here the claimant, whether as party plaintiff or counterclaimant, or at his request the clerk, will insert a concise statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:

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STATE OF HAWAII )

COUNTY OF \_\_\_\_\_ ) ss:

.....being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to claimant, whether as party plaintiff or counterclaimant, exclusive of all set-offs and just grounds of defense.)

.....  
Plaintiff (or agent)

Subscribed and sworn to before me this.... day of ....., 19.....  
.....

.....  
Clerk (or notary public)

**NOTICE**

**T O :** .....

Defendant

.....  
Home address

.....  
Business address

You are hereby notified that .....has made a claim and is requesting judgment against you in the sum of .....dollars (\$.....), as shown by the foregoing statement. The court will hold a hearing upon this claim on .....at ....m. in the Small Claims Division of the District Court at (address of court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[Seal]

.....  
Clerk of the Small Claims  
Division of the District Court

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a notice of the day and hour set for the hearing, not less than five nor more than fifteen days from the date of the filing of the action. Where, in a case controlled by another statute, a greater or lesser time for hearing is specified by the other statute, that specified time is controlling. All actions filed in the court shall be made returnable therein.

**Sec. 229-15. Fees and costs; waiver.** The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims Division of the District Court shall be not more than \$5. Other fees shall be as the court prescribes. The magistrate may waive the prepayment of costs or the pay-

ment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the court shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "in forma pauperis" may not be employed in the court. If a party fails to pay accrued costs, though able to do so, the magistrate may deny him the right to file a new case in the court while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the court.

**Sec. 229-16. Set-off or counterclaim; pleading; retention of jurisdiction.** If the defendant, in an action in the Small Claims Division of the District Court, asserts a set-off or counterclaim, the magistrate may require a formal and concise plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the magistrate may continue the case for that purpose. When the limit of the district court as provided by section 229-13 is exceeded in the counterclaim but within the jurisdictional limit of the court as provided by section 216-4, the action shall nevertheless remain in the Small Claims of the District Court and be tried therein in its entirety.

**Sec. 229-17. Jury trial; demand; assignment to other court.** In a case filed or pending in the Small Claims Division of the District Court in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the circuit court under the procedure provided for jury trials.

**Sec. 229-18. Pre-trial settlement; trial; procedure; dismissal or nonsuit; other disposition.** (a) On the return day specified by subsection 229-14(g), or at such later time as the magistrate sets, the trial shall be had. Immediately prior to the trial of a case pursuant to this subtitle, the magistrate shall make an earnest effort to settle the controversy by conciliation. If no settlement is effected, the magistrate shall proceed with the hearing on the merits pursuant to subsection (b) of this section.

(b) The parties and witnesses shall be sworn. The magistrate shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by section 229-14(f), or under rules of court, or on ex-parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or have default judgment entered in his favor on any counterclaim filed in the manner provided herein for a plaintiff, or the case may be continued or returned to the files for further proceedings on a later date, as the magistrate directs. If both parties fail to appear, the magistrate may return the case to the files, or order the action dismissed for want of prosecution, or make any other disposition thereof as justice requires.

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**Sec. 229-19. Judgment for wages; oral examination; payment.** When a judgment rendered in an action pursuant to this subtitle is founded in whole or in part on a claim for wages or personal services, the magistrate shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the magistrate shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.

**Sec. 229-20. Award of costs.** In any action pursuant to this subtitle, the award of costs is in the discretion of the magistrate, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party.

**Sec. 229-21. Other rights of judgment creditor.** Except as otherwise provided by this subtitle, or in the rules prescribed pursuant to section 229-23, a party obtaining a judgment in the Small Claims Division of the District Court is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court.

**Sec. 229-22. Rules; forms and public information.** For the more effective carrying out of this subtitle, the justices or a majority of them of the supreme court may make uniform rules governing the procedure in the Small Claims Division of the District Court. The justices shall cause to be published a booklet or pamphlet describing, in language readily understandable by a layman, the procedures of the Small Claims Division of the District Court, the remedies available upon judgment in the Small Claims Division of the District Court and such other information as will facilitate the utilization of the Small Claims procedure. The justices shall also cause to be made such standardized forms as may be utilized throughout the Small Claims procedure prior to, upon and after judgment.

**Sec. 229-23. Parties.** Wherever the term party or parties appears herein, or any reference is made to individuals desiring to present a claim, then such term or terms or reference shall mean and include a party defendant having a counterclaim, offset or crossclaim to present in the action.”

SECTION 2. This Act shall take effect upon its approval.  
(Approved June 30, 1970.)