

ACT 143

H. B. NO. 2044-72

A Bill for an Act Relating to Deposition and Discovery Proceedings, Amending Chapter 624, and Repealing Chapter 625 of the Hawaii Revised Statutes.

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

SECTION 1. Chapter 624 of the Hawaii Revised Statutes is amended as follows:

(a) A new section 624-24 is added, to read as follows:

“Sec. 624-24. Arbitrators, etc. An arbitrator or other person, other than a court, having authority to hear, receive and examine evidence, may order that the deposition of a witness be taken within the state, or by leave of a circuit court outside the state, for use as evidence in a pending civil matter, when the circumstances are such that it is probable that the witness will not be able to, or will not be compellable to, attend and give evidence before such person at the hearing. Except as otherwise provided, the deposition shall be taken and may be used in the same manner as is provided by the rules of court relating to depositions in civil actions in circuit courts.

Nothing herein contained limits or affects any other power heretofore or hereafter conferred with respect to the taking of depositions.”

(b) A new section 624-24.5 is added, to read as follows:

“Sec. 624-24.5. Compelling attendance of witness; commission for taking testimony.

(a) When the taking of a deposition is authorized by statute or rule of court, the attendance of the witness and the answering of questions may, except as otherwise provided, be compelled:

- (1) By any court when the action or proceeding is pending before it or the taking of the deposition has been ordered by it;
- (2) By the circuit court of the circuit in which the deposition is being taken, when the action or proceeding is pending before, or the taking of the deposition has been ordered by, another circuit court or an arbitrator or other person, other than a court;
- (3) By the district court of the circuit in which the deposition is being taken, when the action or proceeding is pending before, or the taking of the deposition has been ordered by, another district court.

(b) When the taking of a deposition outside the state is authorized by statute or rule of court and the issuance of a commission or letters rogatory is appropriate, the same may be issued by any court before which the action or proceeding is pending, or which has ordered or given leave for the taking of the deposition.”

(c) A new section 624-25 is added, to read as follows:

“**Sec. 624-25. Discovery.** A civil action in the nature of a bill for discovery may be brought according to the usages and principles of courts of equity, unless the matter is governed by the rules of court.”

(d) The new section enacted by Act 207, S. L. 1971, is renumbered 624-25.5, and inserted in chapter 624, to follow section 624-25.

(e) Section 624-27 is amended to read as follows:

“**Sec. 624-27. Subpoena to witness.** Where a commission to take testimony within the State has been issued from a court without the State, or where a notice has been given or any other proceeding has been taken for the purpose of taking testimony within the State, pursuant to the laws or practice of the state or jurisdiction wherein the deposition is to be used for purposes of discovery or as evidence, including the United States if it is a federal proceeding, the circuit court, in a proper case, on the presentation of a verified petition shall order the issuance of a subpoena to any witness, commanding him to appear before the commissioner, officer or person named or designated in the commission, notice or other paper, at a time and place specified in the subpoena, to testify in the same manner as is provided by the rules of court relating to depositions for use in State. If any witness fails to obey the subpoena, or refuses to testify, or to produce a book or paper pursuant to a subpoena or to subscribe his deposition, the court issuing the subpoena, if it is determined that a contempt has been committed, may prescribe the punishment as in the case of a recalcitrant witness in a circuit court in the State, and may make such additional or other orders as would be proper if the deposition were for use in the State.”

(f) Section 624-28 is amended to read as follows:

“**Sec. 624-28. Taking and return of deposition.** The officer, commissioner, or person before whom a witness appears, in a case specified in section 624-27, shall take down his testimony, in writing, and shall annex thereto copies of all books and papers produced or such parts thereof as shall be required, and shall certify and transmit it in accordance with the laws and practice of the state or other jurisdiction from which the commission, notice, or other paper emanated.”

(g) Section 624-35 is amended to read as follows:

“**Sec. 624-35. Costs.** The costs of depositions may be taxed in the bill of costs as provided by Section 607-9.”

(h) Section 624-41 is amended to read as follows:

“**Sec. 624-41. Action for.** A person who, before action, is desirous of perpetuating his own testimony or the testimony of any other person, may proceed in accordance with the rules of court or may bring a civil action in the circuit court of any circuit in which it is fair and equitable to the parties that

the matter be heard, setting forth (1) that the plaintiff expects to be a party to an action cognizable in a court of this State but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and his interest therein, (3) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (4) the names of the persons he expects will be adverse parties and their addresses, and (5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; and praying for an order authorizing the plaintiff to take the depositions of the persons to be examined named in the action, for the purpose of perpetuating their testimony.

Personal service shall be made on the expected adverse parties as in other civil actions. In case service cannot be made in the State service may be made as provided by sections 634-60 and 634-60.5, but if an action is brought under this section service shall not be made by publication."

(i) Section 624-45 is amended to read as follows:

"Sec. 624-45. Costs. The applicant or plaintiff shall pay all costs of all proceedings under section 624-41, but such disbursements ultimately may be allowed in taxation of costs as in the case of disbursements for depositions."

(j) Sections 624-1, 624-2, 624-11, 624-12, 624-13, 624-14, 624-15, 624-16, 624-17, 624-18, 624-19, 624-21, 624-22, 624-23, 624-26, 624-31, 624-32, 624-33, 624-34, 624-42, 624-43, and 624-44 are deleted.

(k) The heading of chapter 624 is changed to read "DEPOSITIONS AND DISCOVERY".

(l) The part heading preceding section 624-21 is renumbered and changed to read: "Part I. General Provisions".

(m) The part heading preceding section 624-26 is renumbered "Part II".

(n) A part heading is inserted preceding section 624-35 to read: "Part III. Costs".

(o) The part heading preceding section 624-41 is renumbered "Part IV".

(p) The part headings preceding sections 624-1, 624-11, and 624-31 are deleted.

SECTION 2. Chapter 625 of the Hawaii Revised Statutes is repealed, except the new section 625-15, enacted by Act 207 of the Session Laws of 1971, which is renumbered and transferred to chapter 624 as elsewhere provided.

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 30, 1972.)