

A Bill for an Act Relating to Garnishment.

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

SECTION 1. Chapter 652, Hawaii Revised Statutes, is amended as follows:

1. A new section is added to be appropriately designated and to read:

“Sec. 652- Prejudgment garnishment; procedures. (a) Except as provided in subsection (e), any creditor desiring to secure a garnishment process before judgment shall attach his petition for process, summons, and direction to the following documents:

- (1) An application, directed to the court to which such action is made returnable, for garnishee process to issue under section 652-1(a);
- (2) An affidavit sworn to by the creditor or some competent affiant setting forth a statement of facts sufficient to show that probable validity exists to sustain the validity of the creditor’s claim;
- (3) An order that a hearing be held before the court or a judge thereof to determine whether or not the garnishee process should be granted and that notice of such hearing be given to the defendant debtor;
- (4) A summons directed to a proper officer commanding him to serve upon the debtor at least four days prior to the date of the hearing, pursuant to chapter 634, the application, a true and attested copy of the petition, summons, and direction, the affidavit, and the order and notice of hearing.

(b) The clerk upon receipt of all such documents in duplicate, if he finds them to be in proper form, shall fix a date for the hearing on the application and sign the order of hearing and notice; except that if the application includes a request for a temporary restraining order, the court or a judge of the court shall act on the application for the temporary restraining order, fix a date for the hearing on the garnishee process and sign the order of hearing and notice.

(c) The clerk shall deliver to the creditor’s attorney the original documents for service. Service having been made, the original documents shall be returned to the court with the endorsement by the officer of service.

(d) The defendant debtor shall have the right to appear and be heard at the hearing. The hearing shall be limited to a determination of whether or not probable validity exists to sustain the validity of the creditor’s claim. If the court, upon consideration of the facts before it, finds that the creditor has sustained the validity of his claim, then the garnishee process under section 652-1(a) applied for shall be granted as requested or modified by the court. The clerk shall deliver to the creditor’s attorney the petition, summons, and direction for service of process. If the court denies the application, only a summons and complaint shall be served. In either event, the creditor may alter the return day of the petition, summons, and direction, or the summons and complaint, as the case may be.

(e) The court or judge of the court may allow the garnishment process

to be issued by an attorney without hearing as provided in subsections (a) to (d) upon verification by oath of the creditor or of some competent affiant, that there is reasonable likelihood that the defendant debtor:

- (1) Neither resides in nor maintains an office or place of business in this State and may depart from the State within six months from the date of filing under this section;
 - (2) Has hidden or will hide himself so that process cannot be served on him;
 - (3) Is about to remove himself or his property from this State;
 - (4) Is about to fraudulently dispose of or has fraudulently disposed of any of his property with intent to hinder, delay, or defraud his creditors; or
 - (5) Has fraudulently hidden or withheld money, property, or effects which should be liable to the satisfaction of his debts.
- (f) The defendant debtor in an action in which garnishee process was allowed under subsection (e) may move to dissolve or modify the garnishee process in which event the court shall proceed to hear and determine the motion expeditiously. If the court determines at the hearing requested by the debtor that probable validity exists to sustain the validity of the creditor's claim, then the garnishee process granted shall remain in effect. If the court determines there is no such probable validity, the garnishee process shall be dissolved. An order shall be issued by the court setting forth the action it has taken.

(g) The court's determinations under this section shall have no effect on the determination of any issues in the action other than the issues relevant to proceedings under this section nor shall they affect the rights of the defendant debtor in any other action arising out of the same claim. The court's determinations under this section shall not be given in evidence nor referred to in the trial of such action."

2. Section 652-1 is amended by amending subsection (a) to read:

"(a) Before judgment. When any goods or effects of a debtor are concealed in the hands of an attorney, agent, factor, or trustee (in this chapter jointly and severally included in the term "garnishee"), so that they cannot be found to be attached or levied upon, or when any debt is due from any person (also included under the term "garnishee") to a debtor, or when any person has in his possession for safekeeping any moneys of the debtor, any creditor may bring his action against a debtor and in his petition for process, or by amendments of the complaint at any time before judgment, after meeting the requirements of section 652- may request the court to insert in the process a direction to the officer serving the same to leave a true and attested copy thereof with the garnishee or at his usual place of abode and to summon the garnishee to appear personally upon the day or term appointed in the process for hearing the action or at any other time appointed by the court and then and there on oath to answer all of the following inquiries, herein inclusively referred to as the "disclosure":

- (1) Whether he has, or at the time the copy was served on him had, any of the goods or effects of the defendant in his hands and, if so, the

nature, amount and value thereof;

- (2) Whether he is, or at the time of service was indebted to the defendant and, if so, the nature and amount of the debt; or
- (3) Whether he has or at the time of service on him had, any moneys of the defendant in his possession for safekeeping and, if so, the amount thereof.

The summons and direction, except as to wages as provided for above, shall be signed and issued after proceedings under section 652- as is usual in other civil process. It shall be served according to such direction. From the time of leaving such copy, the garnishee shall secure in his hands to pay such judgment as the plaintiff shall recover in the action, the following property or choses:

- (1) All the goods and effects of the defendant then in the hands of the garnishee;
- (2) Every debt then owing from the garnishee to the defendant;
- (3) All moneys of the defendant then in the possession of the garnishee for safekeeping; and
- (4) A portion of the wages of the defendant by withholding the amount to be determined 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, whether then or thereafter to become owing.

The property or choses described in (1), (2), (3), and (4) of this paragraph are included under the term "garnishee fund" (in this chapter). The cumulative total value of the fund, in advance of final judgment, shall be no more than shall be sufficient to meet the claim of the plaintiff together with the cost and legal interest. Any excess in the fund shall be released by the court pursuant to subsection (d) of this section. No part of the garnishee fund may be otherwise disposed of by the garnishee except as provided in this chapter.

Except as provided in section 652- , the summons and direction shall be sufficient notice to the defendant to enable the plaintiff to bring his action to trial, unless the defendant is an inhabitant of the State or has some time resided therein, in which case a like copy shall be served personally upon him or left at his last and usual place of abode.

The court shall order the fund garnished before judgment released upon the filing by the debtor with the court of a bond or bonds issued by a surety or sureties licensed to do business as such in the State, in an amount sufficient to pay the claim of the creditor together with costs and interest, and conditioned upon judgment rendered in favor of the creditor and to the extent the claim or any portion thereof, together with costs and interest, if any, is awarded."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not

ACT 155

include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval; provided that this Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

(Approved May 30, 1975.)

*Edited accordingly.