

## ACT 183

H.B. NO. 3043-76

A Bill for an Act Relating to Civil Actions. -

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

SECTION 1. Section 634-23, Hawaii Revised Statutes, is amended to read:

**“Sec. 634-23 Joinder of unknown persons; service when defendant unknown or absent.** When an action or proceeding involves or concerns any property, tangible or intangible, within the jurisdiction of a circuit court, or any legal or equitable estate, right or interest, vested or contingent, in any such property, or any status or res within the jurisdiction of a circuit court:

- (1) Any person having a claim, interest or concern so as to be a necessary or proper party, who cannot be identified or whose name is unknown to the plaintiff, may be made party to the action or proceeding as provided by the rules of court.
- (2) If a defendant is unknown or does not reside within the State or if, after due diligence, he cannot be served with process within the State, and the facts shall appear by affidavit to the satisfaction of the court, it may order that service be made as provided by section 634-24 or by publication, as may be appropriate; provided, that service by publication shall not be valid unless, it is shown to the satisfaction of the court that service cannot be made as provided by section 634-24. The affidavit

required by this paragraph shall set forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect personal service on the defendant, and any other pertinent facts.

- (3) Service by publication shall be made in at least one newspaper published in the State and having a general circulation in the circuit in which the action or proceeding has been instituted, in such manner and for such time as the court may order, but not less than once in each of four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court. If the action or proceeding concerns real property the court shall order additional notice by posting a copy of the summons upon the property.
- (4) Any adjudication shall, as regards a defendant served by publication pursuant to this section, or served as provided by section 634-24, affect only the property, status or res which is the subject of the action, unless (A) the defendant appears in the action and defends on the merits, in which case he shall be liable to a personal judgment with respect to the claim so defended, including in the case of a foreclosure action a deficiency judgment, or (B) the service is authorized by section 634-25 or other provision of law, in which case he shall be liable to any judgment authorized by such law.
- (5) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law or rule of court."

SECTION 2. Section 634-24, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 634-24 Service outside the State or by registered mail.** In any case in which, under section 634-23, provision is made for service of summons as provided by this section, personal service shall be made upon the defendant wherever found or he shall be served by registered or certified mail with request for a return receipt and marked deliver to addressee only, as ordered by the court. A certified copy of the order, the summons and the complaint shall be served, and the service shall be evidenced by an affidavit showing that the required papers were sent by registered or certified mail as aforesaid, and by the receipt signed by the defendant and filed with the affidavit, or in the case of personal service by the return of the serving officer or the affidavit of any other person authorized to serve process in the place where the defendant is found or appointed by the court to make the service.

The affidavit required by this section shall set forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to satisfy the requirements of this section and any other pertinent facts."

SECTION 3. Section 634-25, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 634-25 Personal service on resident outside the State.** Whenever a defendant, being a resident of the State, cannot be served within the State per-

sonal service may be made upon him outside the State by any person authorized to serve process in the place in which he may be found or specially appointed by the court to make the service which service shall be evidenced by the return of the serving officer or by affidavit and shall be of the same legal force and validity as if made within the State.

The affidavit required by this section shall set forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to satisfy the requirements of this section and any other pertinent facts.”

SECTION 4. Section 669-3, Hawaii Revised Statutes, is amended to read:

“**Sec. 669-3 Notice by publication or registered mail.** In any action brought under section 669-1(a) or (b), unknown persons and any known persons who do not reside within the State or cannot after due diligence be served with process within the State may be served as provided by sections 634-23, 634-24, and 634-26.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 6. This Act shall take effect upon its approval.

(Approved June 1, 1976.)

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\*Edited accordingly.