

A Bill for an Act Relating to Service of Process.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER SERVICE OF PROCESS

§ -1 **Process servers; license required.** Except as otherwise provided by law or rules of court, no person shall engage in the business as or serve in the capacity of a process server without being licensed as provided in this chapter. This chapter shall not apply to:

- (1) The sheriff or the sheriff’s deputies;
- (2) The chief of police of the county in which the service is made or the chief’s authorized subordinate;
- (3) Bailiffs and any other authorized court personnel; and
- (4) Other persons appointed by the court to serve process.

§ -2 **Qualifications.** The supreme court shall prescribe qualifications for process servers licensed under this chapter.

§ -3 **Application; fees.** (a) Every applicant for a license under this chapter shall file an application with the supreme court in such form and setting forth such information as may be prescribed or required by the supreme court, and shall furnish such additional information bearing upon the issuance of the license as the supreme court shall require. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a partnership or corporation, any member or officer thereof may sign the application and verify the same on behalf of the applicant.

(b) Every application for a license hereunder shall be accompanied by an application fee of \$25.

§ -4 **Bond; recovery for damages.** (a) An application for a license shall be accompanied by a bond in the sum of not less than \$5,000 which has been executed by the applicant as principal and by a surety company authorized to do business in the State as surety, and conditioned upon compliance with this chapter and all laws governing the service of process in the State.

(b) Any person who recovers damages in any action or proceeding for injuries caused by a service of process which was made by a licensed process server and which did not comply with the provisions of law governing the service of process may recover the amount of the damages from the bond required in subsection (a).

(c) Whenever there has been a recovery against a bond under subsection (b) the licensed process server shall file a new bond within thirty days to reinstate the bond. If the licensed process server does not file the bond within thirty days, the license shall be revoked and the remainder of the bond forfeited to the general fund.

§ -5 **Place of business and posting of license.** (a) A licensed process server shall have, maintain, and operate from a definite place of business in the State and shall display the process server’s license at that location.

(b) The licensed process server shall report any change of address or telephone number to the supreme court within ten business days from the change.

§ -6 **Service of process fees.** All process servers licensed under this chapter shall receive mileage and fees as established in sections 607-4 and 607-8.

§ -7 **Acts prohibited; penalty.** No person shall be qualified to act as a process server or shall enter upon any of the duties of the office or offer or assume to perform any of those duties until the person has fully complied with each of the requirements in each of the foregoing sections of this chapter and any other qualifications required by rules of court. Any person wilfully violating this section is guilty of a misdemeanor. Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.”

SECTION 2. Section 634-21, Hawaii Revised Statutes, is amended to read as follows:

“**[§634-21] Service of process, by whom.** Except as otherwise provided, service of all process and orders shall be made by the sheriff or the sheriff’s deputy, the chief of police of the county in which the service is made or the chief’s duly authorized subordinate, [or] some other person specially appointed by the court for the purpose[.], or a process server licensed pursuant to chapter .”

SECTION 3. Section 634-22, Hawaii Revised Statutes, is amended to read as follows:

“**[§634-22] Return.** In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff or the sheriff’s deputies, a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the officer making the service. If the officer fails to make service the officer [shall], in like manner, shall endorse the reason for the officer’s failure and sign this record. When service is made by a person specially appointed by the court, or a licensed process server, the person or process server shall make affidavit of [such] that service.

The record or the affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the officer or person making service, in which case the officer or person shall be notified to appear for examination.”

SECTION 4. Section 651-1, Hawaii Revised Statutes, is amended to read as follows:

“**§651-1 General provisions.** This part shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may by the provisions of this part be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase “police officer,” as used in this part, means a licensed process server, or the sheriff of the State or the sheriff’s deputy, and any chief of police or subordinate police officer duly authorized by the sheriff. Nothing in this part shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which [such] the judge’s court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge.”

SECTION 5. Section 653-6, Hawaii Revised Statutes, is amended to read as follows:

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“§653-6 Garnishee process. 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 the officer serving the same to leave a true copy thereof, which shall be attested by the sheriff, the sheriff’s deputy, a licensed process server or other serving officer, with 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 herein¹ be called the garnishee.

In any action brought in the district court by a creditor against a debtor, the creditor [may], 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 State¹ or other officers through whom the salary, stipend, or wages of the judgment debtor is paid, and upon [such] that filing the comptroller or other officer shall withhold from the wages of the judgment debtor the amounts provided in section 651-1(a)¹ subject to payment in good faith as provided in section 652-1(f) and pay the same to the judgment creditor.”

SECTION 6. Section 654-2, Hawaii Revised Statutes, is amended to read as follows:

“[§654-2]] Bond. When the plaintiff desires the immediate delivery of the property, the plaintiff shall execute a bond to the defendant in possession of the property, and to all persons having an interest in the property, of such amount and with such sureties as are approved by the court, conditioned that the plaintiff will prosecute the plaintiff’s action to judgment without delay, and deliver the property to the defendant in possession or any other person, if such delivery is adjudged, and pay all costs and damages that may be adjudged against the plaintiff. Upon the filing of the verified complaint or affidavit with the bond and a motion for immediate consideration of the matter, the court shall forthwith inquire into the matter, ex parte or otherwise, as in its discretion it determines. If thereupon the court finds that a prima facie claim for relief has been established, it shall issue an order directed to the sheriff, or the sheriff’s deputy, or the chief of police, or an authorized police officer of any county, or a licensed process server, to take the property therein described and deliver the same to the plaintiff.

Copies of the verified complainant or affidavit, and, if a bond for immediate seizure has been filed, of the bond, and, if an order for the taking has been issued on an ex parte hearing, of the order, shall forthwith be served upon the defendant in possession and each person having or claiming a possessory interest in the property, in the same manner as is provided for service of summons unless the

party to be served has appeared in the action, in which case service may be made in the same manner as is provided for service of papers other than the summons. In a proper case, either before or after issuance of an order for the taking, the required service may be combined with the publication of the summons, in which event the giving of notice of the substance of the proceeding shall be sufficient.

Upon the application of any party, the proceeding shall be advanced and assigned for hearing at the earliest possible date.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that this Act shall not affect any rights, duties, or responsibilities which have matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved June 7, 1989.)

Note

1. So in original.