

JAN 28 2015

A BILL FOR AN ACT

RELATING TO PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the current
2 statutory exemptions from real property and personal property
3 attachment or execution need to be updated to create a safety
4 net of assets for Hawaii families who struggle to earn a living
5 under heavy debt obligations. These families include workers
6 who live from paycheck to paycheck and have incurred debt due to
7 an unexpected event such as a job layoff, accident, or illness.
8 This Act takes into account the need to allow temporarily
9 unemployed workers and their families who possess a minimal
10 amount of assets and do not want to be on government benefits
11 indefinitely to retain their assets and be able to support
12 themselves in times of personal economic crisis.

13 SECTION 2. Section 651-92, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§651-92 Real property exempt.** (a) ~~[Real property shall~~
16 ~~be exempt from attachment or execution as follows:~~



1 ~~(1)~~ An interest in one parcel of real property in the
2 State of Hawaii of a fair market value not exceeding
3 [\$30,000] the most recent real property tax assessment
4 of the property, that is owned by the defendant [who
5 ~~is either the head of a family or an individual sixty-~~
6 ~~five years of age or older.], including properties~~
7 under the department of Hawaiian home lands, shall be
8 exempt from attachment or execution.

9 ~~[(2) An interest in one parcel of real property in the~~
10 ~~State of Hawaii of a fair market value not exceeding~~
11 ~~\$20,000 owned by the defendant who is a person.]~~

12 The fair market value of the interest exempted in [paragraphs
13 ~~(1) or (2)] this subsection shall [be determined by appraisal~~
14 ~~and shall] be an interest [which] that is over and above all~~
15 liens and encumbrances on the real property recorded prior to
16 the lien under which attachment or execution is to be made. Not
17 more than one exemption shall be claimed on any one parcel of
18 real property even though more than one person residing on such
19 real property may otherwise be entitled to an exemption.

20 Any claim of exemption under this section made before
21 ~~[May 27, 1976,] the effective date of this Act~~ shall be deemed
22 to be amended on ~~[May 27, 1976,]~~ the effective date of this Act



1 by [~~increasing~~] amending the exemption to the amount permitted
2 by this section on [~~May 27, 1976,~~] the effective date of this
3 Act to the extent that [~~such increase~~] the amendment does not
4 impair or defeat the right of any creditor who has executed upon
5 the real property prior to [~~May 27, 1976,~~] the effective date of
6 this Act.

7 (b) No exemption authorized under this section shall apply
8 to process arising from:

9 (1) A lien as provided by section 507-42;

10 (2) A lien or security interest created by a mortgage,
11 security agreement, or other security instrument;

12 (3) A tax lien in the name of the federal or state
13 government;

14 (4) An improvement district lien of any county of the
15 State; or

16 (5) A lien or encumbrance recorded against the real
17 property prior to the acquisition of interest in and
18 commencement of residence on such real property.

19 (c) Attachment or execution shall not apply to a debtor
20 who is not delinquent in payment of income taxes, real property
21 taxes, or mortgages, as applicable."



SECTION 3. Section 651-121, Hawaii Revised Statutes, is amended to read as follows:

"§651-121 Certain personal property and insurance thereon, exempt. The following described personal property of an individual up to the value set forth shall be exempt from attachment and execution as follows:

(1) All necessary household furnishings and appliances, books and wearing apparel, ordinarily and reasonably necessary to, and personally used by a debtor or the debtor's family residing with the debtor; and, in addition thereto, jewelry, watches, and items of personal adornment up to an aggregate cash value not exceeding ~~[\$1,000.]~~ the fair market value of such items as adjusted by the most recent consumer price index.

(2) One motor vehicle up to [a] the fair market value of ~~[\$2,575,]~~ the vehicle as adjusted by the most recent consumer price index, over and above all liens and encumbrances on the motor vehicle; provided that the value of the motor vehicle shall be measured by established wholesale used car prices customarily found in guides used by Hawaii motor vehicle dealers;



1 or, if not listed in such guides, fair wholesale
2 market value, with necessary adjustment for condition.

3 (3) Any combination of the following: tools, implements,
4 instruments, uniforms, furnishings, books, equipment,
5 one commercial fishing boat and nets, one motor
6 vehicle, and other personal property ordinarily and
7 reasonably necessary to and personally owned and used
8 by the debtor in the exercise of the debtor's trade,
9 business, calling, or profession by which the debtor
10 earns the debtor's livelihood.

11 (4) One parcel of land, not exceeding two hundred fifty
12 square feet in size, niche or interment space owned,
13 used, or occupied by any person, or by any person
14 jointly with any other person or persons, in any
15 graveyard, cemetery, or other place for the sole
16 purpose of burying the dead, together with the railing
17 or fencing enclosing the same, and all gravestones,
18 tombstones, monuments, and other appropriate
19 improvements thereon erected.

20 (5) The proceeds of insurance on, and the proceeds of the
21 sale of, the property in this section mentioned, for



1 the period of six months from the date the proceeds
2 are received.

3 (6) The wages, salaries, commissions, and all other
4 compensation for personal services due to the debtor
5 for services rendered during the thirty-one days
6 before the date of the proceeding.

7 (7) Child support, as defined in section 576D-1,
8 notwithstanding that the moneys for child support may
9 be comingled in a bank account.

10 (8) Tax refunds that result from a federal earned income
11 tax credit.

12 (9) Tax refunds that result from federal or state child
13 tax credits."

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval;
17 provided that section 651-121(8) and (9), Hawaii Revised
18 Statutes, in section 3 of this Act shall apply to taxable years
19 beginning after December 31, 2014.

20
INTRODUCED BY: 



S.B. NO. 993

Report Title:

Attachment or Execution of Property; Exemptions

Description:

Amends the thresholds for the exemption of real property from attachment or execution to be based upon the most recent real property tax assessment, regardless of value and for all types of property owners. Clarifies that attachment or execution does not apply to a debtor who is not delinquent in payment of income taxes, real property taxes, or mortgages. Bases the value threshold of certain personal property exempted from attachment and execution on the fair market value as adjusted by the consumer price index. Exempts child support moneys and tax refunds from the federal earned income tax credit and federal or state child support tax credit from attachment and execution.

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