



Collection Law Section

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January 20, 2015

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice-Chair
House Judiciary Committee

Re: HB 375, HD 1 Relating to Property
Hearing: Thursday, January 21, 2016, 2:00 p.m.

Dear Chair Rhoads, Vice-Chair San Buenaventura and Members of the Committee:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association ("CLS").¹ It incorporates testimony I submitted during the last legislative session to the House Committee on Consumer Protection and Commerce for its hearing on the bill on February 4, 2015. In addition, attached is a copy of my article from the Hawaii Bar Journal dealing with this bill and its many problems.

I have been practicing law for more than 30 years in Hawaii in the areas of collections and bankruptcy law for both creditors and debtors. I have taught at the William S. Richardson School of Law as a Visiting Professor and served as a Chapter 7 Trustee for the Hawaii United States Bankruptcy Court. I have attached my Curriculum Vita for your reference.

The CLS continues to believe that the bill's aim, "to create a safety net of assets for Hawaii families who struggle to earn a living under heavy debt obligations," is on its face laudable, but a closer look reveals its flaws.

Specifically, as for the personal property portion of the bill in section 651-121, is extremely problematic. How is someone supposed to calculate the personal property exemptions based on "the fair market value of such items as adjusted by the most recent consumer price index" or "the fair market value of the vehicle as adjusted by the most recent consumer price index"? Those phrases are vague and confusing, leading to possible varying calculations. What agency will maintain these standards?

1. The comments and recommendations submitted reflect the position and viewpoint of the Collection Law Section of the HSBA. The position and viewpoint has not been reviewed or approved by the HSBA Board of Directors and is not necessarily the same of the Hawaii State Bar Association.

The proposed amendment to the real property exemption in section 651-92 would essentially eliminate execution upon real property as a remedy for judgment creditors, the sole remedy that exists as a practical matter. This is so even though HD 1 now adds to HRS 651-92(a) dollar amount to its proposed exemptions, although its elimination of the requirement that the property serve as a debtor's residence essentially eviscerates the reason for the exemption in the first place.

Moreover, proposed HRS 651-92(c) provides that

Attachment or execution shall not apply to a debtor who is not delinquent in payment of income taxes, real property taxes, or mortgages, as applicable.

Debtors with real property would be rendered judgment proof from debts of all kinds, including tort judgments for personal injury (as in, for example, wrongful death, assault, fraud, and related intentional and negligent torts) as well as debts for public services such as hospital and medical services. Such unintended consequences would not be wise as a matter of public policy.

In addition, the Committee should note that any amendment to the existing exemption scheme will impact not only State court debtors, but also potentially federal bankruptcy debtors and their estates, which could be seriously compromised by essentially unlimited exemptions through debtors opting out of the less generous federal exemptions. Individuals harmed by dishonest debtors, for example, who have defrauded consumers through Ponzi schemes, would not be able to recover anything in satisfaction of their claims.

Finally, the chilling impact upon commercial lenders would be substantial, resulting in the potential drying up of available credit to the very population this bill seeks to help: Hawaii's families.

Thank you for your consideration of the Section's comments and concerns.

/s/ David C. Farmer

Director
Collection Law Section of the HSBA

cc: Steven Guttman
Patricia A. Mau-Shimizu

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HAWAII STATE EXEMPTIONS FROM ATTACHMENT AND EXECUTION: TIME FOR AN OVERHAUL?

David C. Farmer

The Proposed Legislation

During Hawaii's 28th legislative session in 2015, two measures (HB 375 H.D.1 and SB 993) titled "Relating to Property" proposed to (1) amend the threshold amount for the exemption of real property from attachment or execution¹ initially to the fair market value of the property (essentially giving debtors an unlimited exemption as do Florida and Texas exemption statutes); (2) completely exempt a debtor who is not delinquent in income taxes, real property taxes, or mortgages; (3) amend the personal property exemption for an automobile be based on fair market values;² and (4) exempt child support, EITC refunds, and child support tax credit from attachment and execution.

The purpose of the bills was stated to be "to create a safety net of assets for Hawaii families who struggle to earn a living under heavy debt obligations."

After receiving only one supporting testimony in favor³ and opposition from several others in both House and Senate hearings, including the Department of Taxation and the Attorney General, the House bill was amended to provide a blank amount to presumably raise the real property exemption from \$30,000, the amount in effect since 1978.

Both measures died in committee but remain to be considered next session.

Definitions

Black's Law Dictionary defines an exemption as a "privilege allowed by law to a judgment debtor, by which he may retain property to a certain amount or certain

¹ Since 1978, Haw. Rev. Stat. § 651-92 has provided exemptions of \$30,000/\$20,000. Prior to 1978, the amounts were \$20,000/\$10,000.

² Haw. Rev. Stat. § 651-121 provides specific dollar amounts for vehicles.

³ The sole favorable testimony came from a bankruptcy practitioner who noted that, "if [the current exemptions] had been indexed to the consumer price index at the time they were passed 35 years ago, the value of those exemptions would have truly protected Hawaiians' participation in the middle class."

classes of property, free from all liability to levy and sale on execution, attachment, or bankruptcy.” For over a century, exemption laws have protected debtors and their dependents, and afforded them significant rights.

Execution can refer to any method of enforcing a money judgment. However, in debt collection, execution usually refers to the specific method of getting a writ of execution from the court clerk to give to the sheriff authorizing the seizure of the debtor’s property and sell it so that the net proceeds can be given to the creditor in satisfaction of its debt.

After the sale, the money collected is first used to pay the expenses of the sale. In some states, including Hawaii, if there are any liens on the property that are senior to the judgment creditor, then the buyers must accept the property with the senior liens. Junior liens are effectively extinguished; junior creditors do not receive anything from the distribution, nor do their liens survive the sale of that particular property. The judgment creditor is paid up to the amount of the judgment with the balance, if any, going to the debtor as an exemption.⁴

Although the modern law of execution derives from the common law writ of *fi fieri facias*, today it is largely determined by state law.⁵ Only a creditor with an unpaid, unsecured debt needs to resort to execution. A secured creditor can, in most cases that do not include mortgages, take or foreclose on the collateral without going to court or using the sheriff.

Although the purpose of exemption laws is to provide a minimum means of survival for an individual or a family, the relationship between what is exempt and what is necessary for survival is a very tenuous one. Indeed, especially considering that everyone has the same basic needs for survival, exemption laws vary greatly

⁴ See Schuler v. Wallace, 607 P.2d 411, 61 Haw. 590 (1980):

The last paragraph of the present § 651-95 (1979 Supp.) directs that if the sale of real property is made, the proceeds “shall be applied in the following order of priority: first, to the defendant to the amount of the exemption; second, to the satisfaction of the execution costs, attorney’s and appraiser’s fees; and any other fees that may necessarily arise; third, to the satisfaction of the lien under which the sale is made; fourth, to the discharge of any subsequent liens and encumbrances according to their priority, and fifth, the balance, if any, to the defendant.”

⁵ See Haw. Rev. Stat Chapter 651 (Part I, Attachment and Part II, Execution). For a complete description of attachment and execution practice, see 2013 HAWAII COLLECTION & BANKRUPTCY LAW MANUAL, published by Hawaii Bankruptcy Bar Association.

among the states. Part of this variation and the meager exemptions allowed by many states stem from the fact that many of the laws were enacted in the 1800s and have not been updated since. State exemptions are not adjusted for inflation.

However, exempt property does make it more difficult for the sheriff to levy property, because the debtor could be entitled to damages if exempt property is levied. In most cases, the creditor must post a bond or indemnify the sheriff for the possibility of taking exempt property, or the creditor may even get a court order to declare that certain property is nonexempt, if the property's status is unclear.

Exemption Laws History

All states have laws that exempt certain property from being levied by unsecured creditors. Exemption laws do not apply to the collateral of a secured creditor. These are the same exemptions used in Chapter 7 under the Bankruptcy Code, although 18 states allow the use of federal exemptions for bankruptcy.

Exemption laws arose in the United States for various reasons. Canons of decency in early English common law initially provided debtors an exemption for necessary clothing. English common law eventually evolved to include exemptions for bare essentials, clothing, bedding, and tools of trade. However, these laws reflected little tolerance for debtors and recognized exemptions for bare essentials and only those minimal assets necessary for the debtors' survival.

In the United States, the northeastern states adopted similar restrictive exemption laws, while the southern and western states responded to the economic depressions of the eighteenth and nineteenth centuries by enacting exemption laws that provided debtors with greater protection.

Early exemption laws were also enacted as a way to encourage settlement. For instance, the Federal Homestead Act of 1862 exempted newly acquired land from debts accrued prior to the debtor's acquisition of the land. Additionally, many states enacted their own homestead laws that exempted the homestead and, in some states, a certain amount of personal property.

Purposes of Exemption Laws

Exemption laws serve a variety of purposes. First, exemption laws promote societal interests. Courts have held public policy supports affording debtors with

exemption rights.⁶ One primary policy reason for exemption laws is to “protect the family unit from impoverishment, relieve society of the burden of supplying subsidized housing, and provide debtors with a means to survive”⁷ Exemption laws have also been found to promote the following social functions, including to:

- (1) provide the debtor with property necessary for his or her physical survival;
- (2) protect the dignity, culture, and religious identity of the debtor;
- (3) enable the debtor to rehabilitate himself or herself financially and earn income in the future;
- (4) protect the debtor’s family from adverse consequences of impoverishment; and
- (5) shift the burden of providing the debtor and his or her family with minimal financial support from society to the debtor’s creditors.⁸

Another purpose of exemption laws is to rehabilitate the debtor and to encourage the repayment of debts. Exemption laws emphasize rehabilitation of the debtor by exempting wages and occupation-related items to allow the debtor to continue working and hopefully to enable the debtor to repay his or her debts. For example, if wage garnishment was unlimited, creditors would be able to garnish the debtor’s entire paycheck, leaving the debtor with little incentive to keep working. Furthermore, if the debtor were not able to exempt occupation-related items such as tools, the debtor might also be unable to work. By exempting wages and occupation-related items, debtors are encouraged to keep working and, accordingly, repay their debts.

Exemption laws also helped some debtors avoid bankruptcy, beneficial to both debtors and creditors. Bankruptcy avoidance also extends creditors the

⁶ See, e.g., Bertozzi v. Swisher, 81 P.2d 1016, 1017 (Cal. Ct. App. 1938) (“the fundamental reason for the enactment of exemption laws is to protect a person, whatever his occupation might be, from being reduced by financial misfortune to abject poverty . . .”).

⁷ Norwest Bank Neb. v. Tveten, 848 F.2d 871, 876 (8th Cir. 1988).

⁸ In re Ellingson, 63 BR. 271, 277-78 (Bankr. N.D. Iowa 1986)); see also Tveten, 848 F.2d at 876.

opportunity to recover the debt owed to them, whether it is voluntarily paid by the debtor or by garnishment of the debtor's wages or assets.

State Law Exemptions

A wide disparity exists in the type and amount of exemptions allowed by different states, although some exemptions are common in all jurisdictions. The language of statutes providing for exemptions at the state level also varies. Some statutes use the word "exempt" to describe the property the debtor may shelter from the claims of creditors. The word "exempt" is commonly left undefined, but is generally held to protect the property described from all forms of legal process. Another type of exemption statute provides for the exemption of property from "all process." These statutes list the types of process, such as garnishment, attachment, or sale of execution that creditors may not utilize, in satisfying their claims, to obtain the property listed in the statute.

Most exemption statutes provide protection for housing, clothing, food, life insurance,⁹ earnings, and personal and household possessions. Many also include a dollar amount exemption. State exemption laws are often based on the common needs of residents.¹⁰ For example, North Dakota's exemption scheme provides for crops and grains,¹¹ Arizona's provides for firefighting equipment,¹² and California's provides for jewelry, heirlooms, and works of art.¹³

Some exemptions apply to specific property, but have unlimited value. Most of these exemptions apply to property that would almost certainly not have much value and would be difficult to sell, such as appliances, specific types of furniture, and Bibles. However, many states also exempt pensions, public benefits, and certain insurance payments without a value limit. Most types of retirement plans such as 401(k) plans are fully exempt regardless of the state of domicile because they are exempt by federal law.

⁹ This exemption rests on the theory that a creditor cannot claim any equity in a fund that has not been used as a basis for credit. Reiff v. Armour & Co., 139 P. 633, 635 (Wash. 1914).

¹⁰ See Poznanovic v. Maki, 296 N.W. 415, 417 (Minn. 1941). The court recognized the legislature based exemptions provided to its citizens upon "their individual circumstances and necessities" *Id.* (quoting Grimes v. Bryne, 2 Minn. 89, 104 (Minn. 1858)).

¹¹ See N.D. CENT. CODE § 28-22-02(8).

¹² See ARIZ. REV. STAT. ANN. § 33-1128.

¹³ See CAL. CIV. PROC. CODE § 704.040 (not to exceed \$6,075).

Federal Law Exemptions

The federal law exemptions are utilized by debtors when filing a petition for bankruptcy and can be found in the Bankruptcy Code in 11 U.S.C. § 522.¹⁴ This section lists categories of property a debtor may claim as exempt and places value limits on that property.¹⁵ Congress has given states the right to “opt-out” of the federal exemption scheme.¹⁶ If the debtor’s state has not “opted-out” of the federal exemption scheme, the debtor is able to choose the federal exemptions or the debtor’s state law exemptions when filing a petition for bankruptcy.¹⁷

Although the United States Constitution gave the federal government authority over bankruptcies,¹⁸ many argued that states should have the right to regulate exemptions, because state exemptions already existed for debtors which is why many state exemptions have existed since the 1800s.¹⁹ Proponents of the Bankruptcy Reform Act of 1978 wanted to make the federal exemptions the only exemptions, but proponents of states’ rights wanted to keep the state exemptions. A compromise was reached, so the Bankruptcy Reform Act required the use of federal exemptions unless the states decide to opt out. Many debtors took advantage of the law’s weakness by moving to states that had the highest exemptions. This ploy was

¹⁴ See 11 U.S.C. § 522 (2010). A debtor filing a petition for bankruptcy may exempt property provided for in § 522(d) of the Bankruptcy Code or property provided for in the debtor’s state law exemptions unless the debtor’s state law specifically authorizes against the use of federal exemptions. *Id.* § 522(b).

¹⁵ 2 COLLIER BANKRUPTCY MANUAL § 522.01 (4th ed. 2011), § 522.09. The value limits of certain exemptions are adjusted every three years to reflect changes in the Consumer Price Index for All Urban Consumers, which is published by the Department of Labor. 11 U.S.C. § 104(b)(1).

¹⁶ Currently, the following 32 states have “opted-out” of the federal exemption scheme by enacting legislation prohibiting their residents from electing the federal exemptions: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. WEST’S BANKRUPTCY EXEMPTION MANUAL, 2014-2015 ed. 48, § 4:2.

¹⁷ 11 U.S.C. § 522(b). If the debtor chooses to claim exemptions under state law, the state under whose law the debtor must claim exemptions is the state in which the debtor has been domiciled for 730 days preceding the filing of the bankruptcy petition. *Id.* § 522(b)(3)(A). If the debtor had not been domiciled in one state for the entire 730 days, the applicable state law is that of the state in which the debtor was domiciled for 180 days immediately preceding the 730-day period or for the longer portion of the 180 days. *Id.*

¹⁸ UNITED STATES CONSTITUTION, Article I, Section 8, paragraph 4: “To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.”

¹⁹ This is also why many state exemptions have a very low value, because they have not been updated since the 1800s or early 1900s.

considerably weakened, but not eliminated, by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) that instituted state residency requirements for claiming state exemptions. However, if only federal exemptions were permitted in the 1978 Act without allowing the states to opt out, then debtors would not have been able to take advantage of the system, and the new state residency requirements in the BAPCPA would have been unnecessary.

The bankruptcy law using only federal exemptions would not only have made it more fair by giving everyone the same exemptions, but it would have prevented 27 years of abuse and would have simplified bankruptcy considerably by eliminating from consideration the exemptions of each state and state residency requirements from the Bankruptcy Code.

The amounts allowed under the federal bankruptcy exemptions are adjusted every three years ending on April 1 to reflect changes in the Consumer Price Index. The federal bankruptcy exemptions were last adjusted in 2013.²⁰

²⁰ If married and filing jointly, a debtor may double all of the federal bankruptcy exemptions such as claim a homestead exemption of \$45,950 (double the listed homestead exemption amount of \$22,975). If a dollar amount does not accompany a listed piece of property, the entire value of the property is exempt. All code references are to 11 U.S.C. (Title 11, United States Code).

Homestead

§ 522(d)(1), (5) - Real property, including mobile homes and co-ops, or burial plots up to \$22,975. Unused portion of homestead, up to \$11,500 may be used for other property.

Personal Property

§ 522(d)(2) - Motor vehicle up to \$3,675.

§ 522(d)(3) - Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$575 per item, and up to \$12,250 total.

§ 522(d)(4) - Jewelry up to \$1,550.

§ 522(d)(9) - Health aids.

§ 522(d)(11)(B) - Wrongful death recovery for person you depended upon.

§ 522(d)(11)(D) - Personal injury recovery up to \$22,975 except for pain and suffering or for pecuniary loss.

§ 522(d)(11)(E) - Lost earnings payments.

Pensions

§ 522(b)(3)(C) - Tax exempt retirement accounts (including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans).

§ 522(b)(3)(C)(n) - IRAs and Roth IRAs to \$1,245,475.

Public Benefits

§ 522(d)(10)(A) - Public assistance, Social Security, Veteran's benefits, Unemployment Compensation.

§ 522(d)(11)(A) - Crime victim's compensation.

Tools of Trade

The Bankruptcy Code and some states, but not Hawaii, provide a wildcard exemption, an amount that can be applied to any property or divided among several properties where the total does not exceed the limit. However, the amount is usually low.

As with other federal exemptions, these amounts are doubled if filing jointly. If both spouses file for bankruptcy jointly, then most states and the federal government allow each spouse to claim the full amount of the exemption. In Hawaii, the real property exemption can only be taken by one person. Hence, Hawaii debtors almost always elect federal exemptions, since the current homestead exemption for a married couple is \$45,950 compared to the existing state exemption of \$30,000.

However, if the property was bought with a loan secured by the property, then the trustee will only sell the item if there is significantly more than enough to pay an exemption and pay the secured creditor; otherwise, there would be little or no money left for unsecured creditors or the trustee's commission. For example, in New York, the exemption for a motor vehicle is only \$4,000. If a car bought with a secured loan has a fair market value of \$12,000, and \$6,000 is owed on the loan, a trustee will sell the car, pay the \$4,000 exemption, the secured creditor \$6,000, and use the remaining \$2,000 minus the trustee's fee to pay unsecured creditors.

The Internal Revenue Code limits the amount of property that is exempt from levy for unpaid taxes.²¹

§ 522(d)(6) - Implements, books and tools of trade, up to \$2,300.

Wildcard

§ 522(d)(5) - \$1,225 of any property, and unused portion of homestead up to \$11,500. The purpose of allowing a debtor to add any unused portion of the homestead to this exemption value limit is to ensure non-homeowners are not discriminated against when filing for bankruptcy.

If a debtor resides in a state that has not opted-out of the federal exemption scheme, and has chosen to use state law exemptions, a debtor may not exempt any amount of interest acquired during the 1215-day period prior to filing bankruptcy that exceeds \$155,675 in real or personal property that the debtor uses as a residence. § 522(p)(1). For example, if a debtor living in Rhode Island, which has a \$500,000 homestead exemption and has not opted-out of the federal exemption scheme, chose to utilize state exemption laws, the Rhode Island state law homestead exemption of \$500,000 would be limited to \$155,675 if the home had been acquired during the 1215-day period prior to filing bankruptcy. In essence, this section limits a debtor's "forum-shopping" for states with liberal homestead exemptions.

²¹ I.R.C. § 6334 exempts certain property, adjusted for inflation, from levy by the IRS. Most of this property allows a household to maintain a minimum living, but the exemption is subject to maximum values, which depend on the type of property. Personal property includes clothing, school books, fuel, provisions, furniture, and personal effects. Additionally, income received from unemployment benefits, public assistance payments, or workmen's compensation are fully exempt. If the taxpayer must pay child support, then any other income is exempt so as to allow the taxpayer to continue child-support payments.

Critique of Proposed Legislation

Although the aim of the bills is on its face laudable, a more critical analysis reveals their flaws.

First and foremost, the chilling impact upon commercial lenders could be substantial, resulting in the potential drying up of available credit to the very population this bill seeks to help: Hawaii's families.

As the Department of the Attorney General noted in its opposition, the bills would effectively prohibit state agencies from using judgment liens to collect moneys owed to them. Specifically, as for the personal property portion of the bill in Hawaii Revised Statutes §§ 651-121(1) and (2) that exempt from attachment and execution certain personal property and one vehicle, up to fair market value, plus an upward adjustment for the consumer price index, these amendments would allow debtors to shelter money from creditors by purchasing vehicles, gold, diamonds, luxury watches, jewelry, and other high value commodities.

Moreover, the wording is extremely problematic. How does one calculate the personal property exemptions based on "the fair market value of such items as adjusted by the most recent consumer price index" or "the fair market value of the vehicle as adjusted by the most recent consumer price index"? These phrases are vague and confusing, leading to possible varying calculations. What agency will maintain these standards?²²

The proposed amendment to the real property exemption in Haw. Rev. Stat. § 651-92 would essentially eliminate execution upon real property as a remedy for judgment creditors, frequently the sole practical remedy. Amended § 651-92(a) would enable debtors to shelter money from state agencies in the form of equity in

The amount of working income that is less than the taxpayer's standard deduction plus all personal exemptions to which he is entitled to is also generally exempt.

²² Worthy of note is the fact that, as of this date, no state exemption scheme provides for CPI adjustments, only the Bankruptcy Code since 2005.

Mr. Farmer has served on the Publications Committee since 1991. His thirty-year practice has concentrated on collections and bankruptcy. He has been a member and officer with the HSBA Collection Law Section and prepared the testimony in opposition to the subject bills. He was also an editor and contributor to the four editions of the Hawaii Collection & Bankruptcy Law Manual; and, since 2005, a contributor to West's Bankruptcy Exemption Manual on Hawaii exemption laws.

any real property, up to its real property tax assessed value, including a home of any value, even high-end properties.

Debtors with real property would be rendered judgment proof from debts of all kinds, including tort judgments for personal injury (as in wrongful death, assault, fraud, and related intentional and negligent torts) as well as debts for public services such as hospital and medical services. Such unintended consequences would not be wise as a matter of public policy.

Any amendment to the existing exemption scheme will impact not only state court debtors, but also potentially federal bankruptcy debtors and their estates. Creditors' claims could be seriously compromised by unlimited exemptions by debtors opting out of the less generous federal exemptions. Individuals harmed by dishonest debtors, for example, who have defrauded consumers through Ponzi schemes, would not be able to recover anything in satisfaction of their claims.

The new subsection Haw. Rev. Stat. § 651-92(c) bars any judgment lien from attaching or executing on a property owned by a debtor who is current on all income taxes, real property taxes, or mortgage payments. The effect of this addition creates a debtor's shelter from creditors, including state agencies. Such debtors could generate huge debt, default on those debts, and then leave judgment creditors with no recourse against the debtor's property.

The amendments to Haw. Rev. Stat. § 651-121 exempt from attachment and execution child support money comingled in a bank account and tax refunds from federal earned income tax credits and from federal or state child tax credits. As noted in the Attorney General's testimony, these amendments would effectively prohibit state government from collecting moneys using the tax refund setoff statute. This bar would negatively impact the Child Support Enforcement Agency's operations and resources. There is also a question as to whose burden of proof it is to show whether amounts are attributable to child support. Limiting the type of tax refunds that can be attached could very well jeopardize Federal welfare funding and Federal funding of the child support enforcement programs.

Taken as a whole, the proposed legislation is seriously flawed and requires a fresh re-examination.

CURRICULUM VITAE
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HAWAII BANKRUPTCY BAR ASSOCIATION
Member (2011 – present), Director (2011)

AMERICAN BAR ASSOCIATION
Member, Litigation and Business Sections (1982 - 2015)

HAWAII STATE BAR ASSOCIATION
Member (1983 - present); Member, Board of Directors, Executive Committee, Staff and Facilities Committee (2012 – 2013); Publications Committee, Member (1991 – present); Hawai'i Bar Journal, Editor/Contributing Author (1991 – present); Bankruptcy Section, Member (1991 – 2010), Director (1996 – 1998; 2007 - 2010), President (1998); Collection Law Section, Member and Director, (1999 – present); Treasurer, (1999 – 2006); CLE Committee, Member (1999 - 2000) (2012 – present); Member, Hawaii State Board of continuing Education (2012–2018); Standing Committee on Delivery of Legal Services to the Public, Co-Chair (2000-2001); Member, Task Force on Paralegal Certification Proposal (2000-2001); Member, Adjunct Legal Service Provider Task Force (2012 – present); HSBA Centennial Show Committee, Chair, (1998-1999); HSBA Bar Convention Show, Director (2002)

AMERICAN BANKRUPTCY INSTITUTE
Member (2003 – 2015)

BANKRUPTCY ALTERNATIVE DISPUTE RESOLUTION PROGRAM
Member, Bankruptcy Mediation Committee (2001 – present)

HAWAII BOARD OF BAR EXAMINERS
Member (1991 - present)

BANKRUPTCY ROUNDTABLE
Member (1990 - present)

KAPI'OLANI COMMUNITY COLLEGE
LEGAL EDUCATION DEPARTMENT
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VOLUNTEER LEGAL SERVICES HAWAII
(formerly HAWAII LAWYERS CARE)
Board of Directors (1999 - 2003)

HONORS:

MARTINDALE HUBBELL
BV Rating (2010 - present)

MAYOR OF HONOLULU
Award of Achievement (2008 Pro Bono Legal Assistance)

VOLUNTEER LEGAL SERVICES HAWAII
Kahiau Award (2008)

HAWAII STATE BAR ASSOCIATION
Outstanding Volunteer Award (May 2000)

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AM JUR HORNBOOK AWARD
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NATHAN BURKAN MEMORIAL COMPETITION
First Prize, Essay on Copyright Law (1984)

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AMERICAN INN OF COURT IV
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PHI KAPPA PHI
Member (1970)

NATIONAL MERIT SCHOLARSHIP
Semi-finalist (1963)

NATIONAL HONOR SOCIETY
Member (1962 - 1963)

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Lecturer, Paralegal Education Program
(Law 202: Legal Interviewing, Negotiating and Advocacy) (2006-2007)

JAPAN-AMERICA INSTITUTE OF MANAGEMENT SCIENCE ("JAIMS")
Faculty, Intercultural Management Program
(MGT 513R: Making Effective Business Presentations) (2003 - 2006)

UNIVERSITY OF HAWAII WILLIAM S. RICHARDSON SCHOOL OF LAW
Visiting Assistant Professor
(Law 554: Secured Transactions; Law 562: Debtor-Creditor Rights; and Law 515: Business Reorganization in Bankruptcy) (2003 – 2004)
Adjunct Professor
(Law 554: Secured Transactions) (Fall 1998-1999, 2002-2004); (Law 515: Business Reorganization in Bankruptcy) (Spring 2003, 2005)
Research Assistant
(Internal investigations, Contracts Tutor and LEXIS Instructor) (1982 - 1985)

STANLEY H. KAPLAN EDUCATIONAL CENTER
Instructor
(LSAT Preparation Courses) (1984 - 1986)

HONOLULU ACADEMY OF ARTS
Teacher, Young People's Summer Art Program
(Studio Art) (1973)

MID-PACIFIC INSTITUTE
Teacher
(Studio Art/Art History) (1970 – 1975)

UH-MANOA COLLEGE OF ARTS & SCIENCES
Lecturer and teaching assistant (painting, drawing, ethics, and religion)
(1969 – 1973)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

SELECTED CLIENTS: Aloha AirGroup, Inc., Aloha Airlines, Inc., and Airgroup Acquisition Corp.
(*Aloha I and II Bankruptcy Cases*)
Deutsche Bank (*In re Hawaiian Airlines*)
Cummins-Allison (*In re Amro-Asian Trading*)

Chapter 11 Bankruptcy Trustees:

James Nicholson (*In re Abigail Kawananakoa*)
Wendell F. Brooks, Jr. (*In re Lots Wako*)

State Court Receivers and Commissioners

Wendell F. Brooks, Jr. (*International Commercial Bank of China vs. L&L (USA) Inc.*)

Rebecca Yee and Benjamin Fujimoto, Co-Receivers

(*Pacific Educational Services Company, dba Hawaii College of Pharmacy*)

Central Pacific Bank

First Hawaiian Bank

Pizza Hut Hawaii

The Shidler Group

Le Jardin Academy

PROFESSIONAL
EXPERIENCES:

CHAPTER 11 TRUSTEE

Hawaii Outdoor Tours, Incorporated; Case No. 12-02279

United States Bankruptcy Court, District of Hawaii (2013 – 2015)

CREDIT ABUSE RESISTANCE EDUCATION PROGRAM

United States Bankruptcy Court, District of Hawaii

Participant (2008 – present)

CHAPTER 7 PANEL TRUSTEE

United States Bankruptcy Court, District of Hawaii (2007 – 2012)

EXPERT WITNESS

Oliver, Lau, Lawhn, Ogawa & Nakamura vs. Edward Komei Yamashiro et al., Civil No. 04-1-2394-12 SSM, Circuit Court of the First Circuit, State of Hawaii (2006-2008)

Lepere vs. Neeley & Anderson, et al., Civil No. 96-4426-10

First Circuit Court, State of Hawai'i (1998)

ARBITRATOR

Court Annexed Arbitration Program (1995 - present)

EXTERN LAW CLERK

Justice Frank Padgett, Supreme Court of Hawai'i (1985)

INTERN, RULE 7 LAW STUDENT PRACTICE

Honolulu City and County Prosecutor's Office (1985)

PUBLICATIONS:

The Tension between the FDCPA and the Bankruptcy Code: Who's on First?

Haw. B. J. (December 2015)

Chapter 15 – Ancillary and Other Cross-Border Cases

Haw. B. J. (October 2015)

Unlicensed Mainland Attorneys' Participation in Local Arbitrations

Haw. B. J. (September 2015)

Hawaii State Exemptions from Attachment and Execution: Time for an Overhaul?

Haw. B. J. (May 2015)

Solos and Small Firms: Wrestling with Potential Ethical Conundra under the Revised Hawai'i Rules of Professional Conduct and the Bankruptcy Code

Haw. B. J. (November 2014)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

PUBLICATIONS:

Cancellation of Debt: What the Creditor Giveth, the IRS Taketh

Haw. B. J. (November 2012)

Law and Theatre: Jealous Mistresses?

Book Review: "Divorce Doctor Updates His Bestselling Book"

Haw. B. J. (October 2012)

How Does A Judgment Creditor Turn Intangible Property into Money?

Haw. B. J. (August 2012)

Lawyers: Beware of Email Scams

Haw. B. J. (April 2011)

When Does the Lien of An Exemplified Foreign Judgment Expire in Hawaii?"

Haw. B. J. (July 2009)

Judgment and Judgment Lien Extension:

What is an Amended Judgment's "Original Date?"

Haw. B. J. (June 2009)

Taking the 'M' Out of MCLE (co-authors Walter C. Davison and Elizabeth A. Kane)

Haw. B. J. (August 2008)

*Is Conversion of Nonexempt Property to Exempt Property on Eve of Bankruptcy
Fraudulent Per Se?*

Haw. B. J. (July 2008)

Book Review: "Broken Trust: Greed, Mismanagement,

and Political Manipulation at America's Largest Charitable Trust"

Haw. B. J. (July 2006)

Bankruptcy Reform: Like a BAPCA Out of Hell?

Haw. B.J. (February 2006)

What's in an "Or?:" Must a Debtor Cure Nonmonetary Defaults to Assume an

*Executory Contract; or, Does "Penalty" Modify "Rate" or "Rate and Provision" in
Section 365?*

Haw. B. J. (October 2005)

*Hawai'i's Federal District Court Judges Differ on Interpretation of Federal Fair Debt
Collection Practices Act*

Haw. B. J. (October 2005)

Lyn Flanigan Anzai: HSBA Executive Director

Haw. B. J. (December 2003)

A New Federal Common Law of Property: Reflections on Craft v. U.S.

Haw. B. J. (October 2003)

Book Review: "PowerPoint 2002 for Litigators"

Haw. B. J. (September 2003)

Untitled haiku poem

Island Fire: An Anthology of Literature from Hawaii

UH Curriculum Research & Development Group and University of Hawai'i Press

(2002) (2003 Ka Palapala Po'okela Award for Excellence in Literature)

Bouncing Off the Walls: A Tiny Acorn of Dispute

Haw. B. J. (October 2002)

The Legal Legacy of Sanford Ballard Dole

Haw. B. J. (July 2002)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

PUBLICATIONS:

*Of Art and Golf, Learning and the Internet:
Adventures in New Museum Opportunities*
Haw. B. J. (May 2002)

Why Should We Support the Arts?
Haw. B. J. (April 2002)

The Wild, Wild East: Millennium Adventures in Southeast Asia
Haw. B. J. (March 2001)

Small Claims Court for Pro Se Debt Collection
Haw. B. J. (February 2001)

Are IRAs Completely Exempt in Bankruptcy?
Haw. B. J. (November 2000)

Book Review: "PowerPoint for Litigators"
Haw. B. J. (October 2000)

Post-Judgment Interest: A Compound Problem?
Haw. B. J. (July 2000)

Book Review: "Divorce with Decency"
Haw. B. J. (May 1999)

*Attorney's Fees & Costs:
Hawai'i's Appellate Courts Impose New Limitations on Recovery*
Haw. B. J. (April 1999)

Randall Roth: A Dreamer Of Change
Haw. B. J. (January 1999)

Hawai'i Enacts Expedited Nonjudicial Foreclosure Process
Haw. B. J. (November 1998)

Atticus Finch: A Role Model
Haw. B. J. (November 1998)

*Compliance with the Federal Fair Debt Collection Practices Act in Litigation:
Reductio Ad Absurdum?*
Haw. B. J. (February 1998)

Judge Dias Sworn in as Hawai'i's First Immigration Judge
Haw. B. J. (January 1998)

*The Trial of the Queen:
A Valid Exercise of Judicial Power or a Travesty of Justice?*
Haw. B. J. (March 1997)

Doing Business in Asia: Hawai'i's Trade Mission to China
Haw. B. J. (December 1996)

Hawai'i's Amended Little Miller Act: A Catch-22 for Gap Claimants?
Haw. B. J. (November 1996)

Westlaw/Lexis Charges: Are They Taxable Costs in Hawai'i?
Haw. B. J. (June 1996)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

PUBLICATIONS:

Are Hawai'i's Recovery Fund Statutes Invalid?

Haw. B. J. (September 1995)

Federal and Hawai'i Garnishment Powers Expanded

Haw. B. J. (May 1995)

Federal Fair Debt Collection Practices Law Limits Attorneys'

Conduct and Practices

Haw. B. J. (April 1994)

Hawai'i's Lawyers Continue Tradition of Charitable Works

Haw. B. J. (December 1993)

Hawai'i Adopts Article 2A of the Uniform Commercial Code

Haw. B. J. (December 1992) (also available on WESTLAW)

In Search of the Oldest Law Firm, Parts I and II

Haw. B. News (March, May 1991)

Crossing the Rubicon: Should the Voluntary/Involuntary Payment Rule

Govern Payments of Unpaid Employment Taxes in Bankruptcy?

(co-author Ray K. Kamikawa, Esq.)

XXI Haw. B. J. 99 (1987), **62 Am. Bankr. L. J. 341** (1988)

Writing with Light:

The Metaphysics of the Copyright Process in the Betamax Cases

7 COMM/ENT 111

(**Hastings Journal of Communications and Entertainment Law**) (1984)

Shibuya v. Architects Hawai'i, Ltd.:

Did the Court Apply an Intermediate Standard of Review?

6 U. H. L. Rev. 261 (1984)

Martin Charlot, Painter of Hawaiian Revelations

Honolulu Magazine, June 1977

SEMINARS

AND MANUALS:

The Tension between the FDCPA and the Bankruptcy Code: Who's on First?

HBBA Fall Conference (November 2015)

Bankruptcy and Consumer Debt Issues

HSBA Access to Justice Conference (June 2015)

Chapter 15 - Ancillary and Other Cross-Border Cases

Hawaii-Japan Insolvency Law Symposium

Institute of Asian-Pacific Business Law, William S. Richardson School of Law, and

Insolvency Practitioners Research Group Japan (February 2015)

Selected Current Issues of Legal Ethics and the Practice of Law

HSBA Collection Law Section (August 2014)

Hawai'i Collection and Bankruptcy Law Manual

HBBA (February 2013)

Bankruptcy Law for Paralegals

Hawaii State Bar Association (HSBA) (August 2012)

Landlord-Tenant Law

Sterling Education Services, Inc. (Sterling) (June 2012)

Collection Law from Start to Finish

National Business Institute (NBI) (August 2011, July 2015)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Post-Judgment Collection Strategies

HSBA Collection Law Section (August 2011)

Judgment Enforcement

Lorman Education Services (Lorman) (July 2011)

U.S. Bankruptcy Court Calendar/Deadlines for Paralegals

HSBA (April 2011)

The Fundamentals of Real Property Foreclosure in Hawaii

NBI (April 2011, March 2014)

Ethics for Bankruptcy and Collection Lawyers

HSBA Collection Law Section Annual Meeting (December 2010)

HSBA (September 2010)

Bankruptcy in Hawaii

Lorman (November 2010)

Bankruptcy for Legal Support Staff

HSBA (September 2010, August 2012)

Real Property Foreclosure: A Step-by-Step Workshop

NBI (April 2010)

The Mortgage Crisis and Bankruptcy

Bankruptcy Law Section, Hawai'i State Bar Association (HSBA) (June 2009)

Bankruptcy: Strategies for Prevention and Planning

Hawai'i Credit Union League (HCUL) (February 2009)

Nuts and Bolts: Hawaii Debt Collection

HSBA Continuing Legal Education Program (January 2009)

Foreign Judgments – Their Care and Handling

Collection Law Section, HSBA (May 2008)

The Automatic Stay: Abstention and Issues of Federal/ State Jurisdiction in Bankruptcy

HSBA Continuing Legal Education Program (March 2008)

Landlord-Tenant Manual Update

Contributor

HSBA Continuing Legal Education Program

(December 2007; May/June 2008 Neighbor Islands Road Show)

Family Law & Spousal Bankruptcy: A Review of Bankruptcy Laws Specific to Family Law

HSBA Continuing Legal Education Program (October 2007)

Commercial Real Estate Financing in Hawaii

Lorman (February 2006)

Annulment: A Family Law Dinosaur?

HSBA Hawai'i Divorce Manual (November-December 2000; October 2005, 2007)

Bankruptcy Exemption Manual

Contributor

West's Bankruptcy Series (2005 - 2016 eds.)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Revised UCC Article 9 Secured Transactions: What Hawaii Practitioners Need to Know
NBI July 2005

How to Successfully Collect on Judgments in Hawaii
NBI (May 2005, 2006)

Collection Techniques and Law in Hawaii
Lorman (April 2005)

Landlord and Tenant Law in Hawaii
Lorman (February 2005, 2006)

Nuts and Bolts of Debt Collection
HSBA Legal Nuts and Bolts Series (2004, 2006, 2007)

Advanced Collection Strategies in Hawaii
NBI (February 2004)

Collection Law Workshop (FDCPA)
HSBA Collection Law Section Annual Meeting
(December 2003, 2004)

*Collecting Family Law Obligations:
Enforcement Strategies & Avoiding Malpractice*
HSBA Collection and Family Law Sections (September 2003)

Debt Collection from Start to Finish in Hawai'i
NBI (February 2003)

Commercial and Residential Evictions
Sterling (February 2003)

Hawai'i District Court Landlord-Tenant Manual
Contributor
HSBA (July 2001, December 2007)

Collections from Insurance Companies, Medicare and Medicaid
Lorman (April 2001)

Hawai'i Foreclosure and Related Bankruptcy and Title Issues
NBI (February 2001, March 2002)

Fair Debt Collection Practices Act and Fair Credit Reporting Act
Lorman (February 2001)

Consumer Credit Workshops
Volunteer Legal Services Hawai'i (2001 – 2004)

Collection of Accounts Receivable in Hawai'i
Lorman (October 2000, April 2003)

Hawai'i State Conference on Collection Law
Professional Education Systems, Inc. (March 2000)

Hawai'i Commercial Lease Litigation
Lorman (November 1999, 2000, June 2002)

Bankruptcy: Strategies for Prevention and Planning
HCUL (June 1999)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Bankruptcy Law for Non-Bankruptcy Attorneys
HSBA-CLE (April 1999)

Consumer Bankruptcy from the Creditor's Perspective: Options and Pitfalls
HCUL (February 1999)

Advanced Consumer Bankruptcy Issues in Hawai'i
NBI (July 1998, November 2000, March 2003)

Credit and Bankruptcy
Hawai'i State Judiciary "Lunch 'n Learn the Law" Program (April 1998)

Collection Law for the Health Care Industry
Lorman (April 1998, 1999, 2000, 2001)

Complying with the Fair Debt Collection Practices Act in Hawai'i
NBI (January 1998, October 1999, May 2001)

Bankruptcy Law for the General Practitioner
Hawai'i Institute for Continuing Legal Education (HICLE)
HSBA Bankruptcy Law Section (December 1997)

Hawai'i Collections Law Seminar (Editor-in-Chief and author), **HICLE** (November 1997), **HSBA** (May 2002, 2006)

Pro Se Bankruptcy Clinics
Hawai'i Lawyers Care (August 1997)
Volunteer Legal Services Hawai'i (March 2002, August 2012)

Bankruptcy Update
Lorman (August 1997, July 1998)

How to Collect a Judgment in Hawaii: A Primer
Lorman (April 1997, 1998, 1999, 2000, 2001, 2003, March 2008)

Real Estate Seminar for Paralegals and Legal Assistants
Institute for Continuing Education (January 1997)

The Impact of Bankruptcy on Dissolution of Marriage
NBI (December 1996, June 1998)

Fundamentals of Bankruptcy Law and Procedure in Hawai'i
NBI (October 1996, 1997; July 1999; November 2001)

What You Need to Know About the Fair Debt Collection Practices Act
Lorman (October 1996)

The Fundamental Principles of Chapter 7 Practice and Procedure
HSBA Bankruptcy Law Section (September 1996)

Pro Se Divorce Clinics
Hawai'i Lawyers Care (July 1996)
Volunteer Legal Services Hawai'i (March 2000, 2002)

Annual Divorce Law Update: Collection and Enforcement Issues
HICLE/ HSBA Family Law Section (December 1995)

Personal Property: Repossession and Related Remedies
NBI (November 1995)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Asset Preservation Techniques in Hawai'i
NBI (September 1995, November 1996)

Recent Developments in Bankruptcy and Commercial Law in Hawai'i
NBI (August 1995)

Successful Judgment Collections in Hawai'i
NBI (May 1995, January 1997, August 2000, January 2002)

Hawai'i Foreclosure and Repossession
NBI (February 1995, November 2003)

Collection Law in Hawai'i
Lorman (January 1994-1995, 1996, 1998-2005)

Advanced Creditor Representation in Hawai'i
NBI (October 1994)

Nuts and Bolts of Bankruptcy Law
HICLE/HSBA Bankruptcy Law Section (July 1994)

Advanced Collections and the Bankruptcy Process in Hawai'i
NBI (April 1994)

How to Get Results in Collection of Delinquent Debts in Hawai'i
NBI (July 1993, June 1997)

Collecting Judgments: Beyond the Basics
NBI (January 1993)

The Court of Last Resort: Chapter 11 Business Reorganization in Bankruptcy
HSBA Bankruptcy Law Section Annual Seminar (May 1993)

Foreclosure and Repossession in Hawai'i
Lorman (July 1992, 1993; November 1994, 1995; June 1997, 1998; May 2008)

Collecting Judgments in Hawai'i
NBI (November 1991)

**REPORTED
DECISIONS:**

Ellis v. P.F. Three Partners et al. (In re Upland Partners)
212 Fed. Appx. 597, 2006 U.S. App. LEXIS 30350 (9th Cir. 2006) (unpublished)

Giacometti v. Arton Bermuda Limited, et al. (In re: Sukamto Sia)
349 B.R. 640, 2006 Bankr. LEXIS 2183 (Bankr. D. Haw. 2006)

GECC Fin'l. Corp. v. Jaffarian
79 Haw. 516, 904 P.2d 530 (Haw. App. 1995),
aff'd in part, rev'd in part, 80 Haw. 624, 905 P.2d 624 (Haw. 1995)

Doe v. Roe
9 Haw. App. 623, 859 P.2d 922 (1993)

Bank of Hawaii v. Wood (In re Wood)
123 B.R. 881 (Bankr. D. Haw. 1991), *aff'd* 972 F.2d 1348 (9th Cir. 1992)

In re Parade Realty, Inc., Employees Retirement Pension Trust
134 B.R. 7 (Bankr. D.Haw. 1991)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

REPORTED
DECISIONS:

In re Shih
125 B.R. 812, (Bankr. D.Haw. 1991)

LAW OFFICE of STUART T. ING

1050 Queen Street, Suite 303
Honolulu, Hawaii 96814
<http://www.bankruptcyhi.com>

Ph No. (808) 521-6600
Fax No. (808) 356-0256
stuart@bankruptcyhi.com

January 20, 2016

Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
And Members of the Committee

Re: Testimony on HB 375, January 21, 2016, 2:00PM

I am testifying in support of HB 375.

I have been a bankruptcy attorney for the last 15 years and have dealt with the financial issues of Hawaii resident on a daily basis. In those 15 years, the Hawaii exemptions have not change at all while the value and cost of everything has increased.

Compared to the California exemptions for residences, Hawaii lags far behind. California's homeowner exemption ranges from \$75k to \$175k. This compares to the Hawaii exemption which tops out at \$30k for a head of household. While creditors may complain about the increased exemption amounts, claiming that it will cause a huge decrease in lending, again I point to California. There is no shortage of lending, secured or unsecured, available to residents of California, even with their larger exemptions.

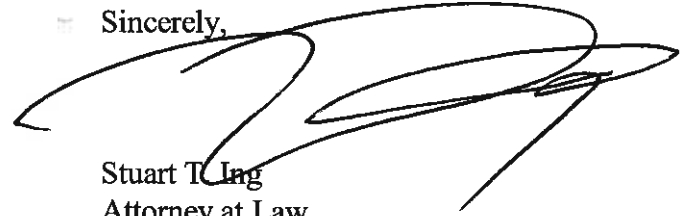
HB 375 also fixes the issue of Hawaiian Home Lands houses. Currently, the Hawaii Bankruptcy Court allows forced sales of Hawaiian Home Lands properties, even if there was no default on mortgages or taxes. This allows unsecured creditors to get at a the value of a Hawaiian Homelands property, something they can not do any other way without the lessor's consent. Hawaiian Homelands Act is specifically set up to benefit Native Hawaiians, not their creditors.

Furthermore, HB 375 makes it clear that child support, Federal Earned Income Tax Credit, and the Federal and State child tax credits are also exempt. All of these payments are for the benefit of the children. If we have the child's best interest in mind, we should keep these funds away from their parent's creditors.

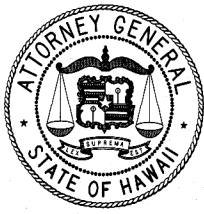
HB 375 will benefit all those filing bankruptcy in Hawaii. If a person's financial situation is bad enough that they need to file bankruptcy, we shouldn't make it worse by forcing a debtor to sell the house the live in or give up money intended for the benefit of Debtor's children.

Thank you for your consideration of HB 375.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart T. Ing", written over the word "Sincerely,".

Stuart T. Ing
Attorney at Law



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

H.B. NO. 375, H.D. 1, RELATING TO PROPERTY.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, January 21, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or Ryan S. Endo, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (“the Department”) opposes this bill.

This bill would effectively prohibit creditors, including state agencies, from using judgment liens to collect moneys owed to creditors, and it may put the Child Support Enforcement Agency out of compliance with federal law.

Section 2 of the bill, page 1, line 15, through page 2, line 14, amends section 651-92(a), Hawaii Revised Statutes. The amendment, among other things, changes the property exemption from \$30,000 to an undetermined amount. The amendments enable debtors to shelter money from creditors, including state agencies, in the form of equity in a property, up to that undetermined amount. This would include any home of any value up to that undetermined amount. Because the amendments do not affect judgment creditors who execute before the effective date of this bill, a large number of foreclosure actions may take place prior to the effective date as judgment liens are only usually enforced upon the sale of property.

Section 2 of the bill, page 3, lines 20-22, adds a new subsection, section 651-92(c). It bars any judgment lien from attaching or executing on a property owned by a debtor who is current on all income taxes, real property taxes, or mortgage payments. The effect of this addition is that if debtors become current on their income tax, real property tax, or mortgage payments, then no judgment liens could attach or be executed on their property. Such debtors could generate huge debt, default on those debts, and then leave judgment creditors with no recourse against the debtor’s property.

Section 3 of the bill, page 4, lines 13-15, and lines 16-18, amends section 651-121(1) and (2), Hawaii Revised Statutes. The amendments exempt from attachment and execution certain personal property and one vehicle, up to fair market value plus an upward adjustment for the consumer price index. These amendments would allow debtors to shelter money from creditors by purchasing high value vehicles and personal property such as gold, diamonds, luxury watches, jewelry, and other high value, low volume commodities. Section 651-121 (1) previously limited the personal property exemption to an aggregate cash value not exceeding \$1,000 and section 651-121(2) previously limited the motor vehicle exemption to \$2,575.

Section 3 of the bill, page 6, lines 7-13, adds new paragraphs (7) to (9) to section 651-121. The amendments exempt from attachment and execution child support money commingled in a bank account and tax refunds from federal earned income tax credits and from federal or state child tax credits. These amendments would effectively prohibit state government from collecting moneys using the tax refund setoff statute from debtors who owe money to the State. State agencies have no way of knowing the basis of any tax refund or how much of a person's tax refund is a result of federal earned income tax credit or from federal or state child tax credits. As a result, collection of any moneys through tax refund setoff could put them in violation of this law.

Concerns exist regarding the commingling of money in a bank account. There may be problems determining what amounts are attributed to child support and what amounts are from other sources. This will impact the Child Support Enforcement Agency's ("CSEA") operations and resources as attaching bank accounts will become more difficult and time consuming. There is also a question as to whose burden of proof it is to show whether amounts are attributable to child support.

Regarding the exemption for tax refunds, under 45 C.F.R. §§ 302.60 and 303.72, CSEA is required to submit notifications to the U.S. Department of Health and Human Services, Office of Child Support Enforcement, of those individuals who have past-due support qualifying for federal tax refund offset. The federal Office of Child Support Enforcement then submits the request to the Secretary of the U.S. Treasury to have federal tax refunds intercepted and paid to CSEA. CSEA receives no information on the basis of which the federal tax refund was issued and, as far as CSEA knows, federal law does not limit the type of refunds being offset and paid

to state child support agencies. The same holds true for state tax refunds. Under 45 C.F.R. §§302.70(a)(3) and 303.102, CSEA is required to collect overdue support by intercepting state tax refunds. The federal requirements do not indicate whether the state is able to limit the types of state tax refunds that can be intercepted. Currently, the State is in compliance with the requirements for intercepting federal and state tax refunds. If this bill is passed limiting the type of tax refunds that can be attached, it may cause the State to be out of compliance with existing federal law and will require the State to apply for an exemption by the United States Secretary of the Department of Health and Human Services. If an exemption is not granted and the State is found to be out of compliance, it will jeopardize federal welfare funding and federal funding of the child support enforcement programs. CSEA is also concerned that this bill would have an adverse impact on the agency's operations and personnel. Because implementation of this measure will be difficult and time consuming.

For the reasons discussed above, we respectfully request that this measure be held.

Presentation To
House Committee on Judiciary
January 21, 2016 at 2:00 PM
State Capitol Conference Room 325

Testimony in Opposition to House Bill 375, HD1

TO: The Honorable Karl Rhoads, Chair
The Honorable joy A. San Buenaventura, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

The Hawaii Bankers Association opposed HB 375 when it was introduced last year and we are pleased that one provision of the measure that was particularly objectionable has been deleted in this version. That provision, dramatically increasing the threshold for exemption from attachment or execution of real property, would have unfairly limited the rights of creditors to pursue legal recourse from defaulted borrowers.

Notwithstanding the deletion of that provision, the language in the current statute is seriously flawed in several areas. Last year, David C. Farmer, representing the Collection Law Section of the Hawaii State Bar Association, wrote and published an excellent article entitled "Hawaii State Exemptions from Attachment and Execution: Time for an Overhaul". This very comprehensive piece provides background on the purpose of exemption laws and offers a critique of House Bill 375. Mr. Farmer concludes by stating that the current statute, as well as proposed changes, are "seriously flawed and requires a fresh re-examination". We agree with Mr. Farmer's assessment and encourage your committee to review his article as well as his testimony and work with him and/or others in the industry to properly amend the language in this statute.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.



Edward Y. W. Pei
(808) 524-5161

**Barbara L. Franklin, Esq.,
Attorney at Law**

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January 20, 2016

TESTIMONY

HB 375

January 21, 2016

2:00 p.m.

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

And Members of the Committee

I am testifying in support of HB 375.

I am a bankruptcy lawyer and have seen the effect of the economy on individual lives during the last thirty years. Exemptions are a key safety net for the middle class and the working poor. It is no secret that the middle class is shrinking. A living wage is out of reach for many in service industries and agriculture. The real question to ask is whether the legislature can continue to support a population with greater and greater needs for government benefits or should the legislature empower individuals to create their own safety net.

In Hawaii, a creditor that sues a consumer and wins a judgment can seize income, personal property, bank accounts, real property including a home that is essential to the basic economic well being of the debtor and the debtor's family. Hawaii has dangerous gaps in exemptions and the legislature has not updated the exemptions for 35 years. Instead of shielding essential assets, Hawaii is fertile ground for creditors to conduct abusive collection practices.

Their creditors know that they can legally threaten to take assets that the person needs to make a living, a car, wages, or even a house. We all know that a creditor can take assets that you knowingly gave as collateral for the loan, such as a car, but should they be able to also take other assets? Even the possibility of taking other assets, to the debtor who lacks the knowledge to protect themselves, is enough to cause that person to liquidate assets they will need in the future, their retirement funds, 401Ks, other assets, because they are desperately trying to pay their bills.

Exemptions allow a debtor to keep certain assets out of the reach of creditors. Depending on the amount of the exemption and the value of their assets, under the current law, creditors are entitled to those non-exempt assets. Usually, that scenario plays out in a bankruptcy case where most non-exempt assets are on the table and available for the trustee to liquidate for the benefit of creditors.

The original legislative intent has been thwarted by the passage of time. According to the U.S. Department of Labor, Bureau of Labor Statistics, \$20,000 in 1978, when the current homestead exemption, Haw. Rev. Stat. § 651-92, became effective the dollar amounts were equivalent to \$70,614 in 2012, more than triple the amount currently in the statute. Clearly the homestead exemptions need to be raised and indexed to recover for inflation. Even if you start now with a lower amount such as \$40,000 and index it, then expectations of lenders would not be thwarted if the amounts increase. The \$30,000 exemption should increase as well and its value in 2012 dollars would be \$105,930, again based on the value of a dollar since 1978.

The financial stability of a family or an individual is often dependent on the ability to earn compensation over a long period of time not only to build a household, a family, and a safety net, but to provide for the next generation to be self-sufficient and to provide for one's elderhood without being a burden on government benefits. Not every person can be in the top even 10% of earnings. Who grows the food and brings you dinner when you dine out; who makes that dinner; who washes those dishes? At \$7.75 per hour, Hawaii's minimum wage is higher than two dozen states. But when you adjust for the high cost of living in the islands, that wage is only worth \$6.67, according to a new analysis by the Washington Post. <http://www.civilbeat.com/2015/07/the-cost-of-living-in-hawaii-means-the-minimum-wage-is-really-only-6-67/>

The fallacy of debtors hiding assets from creditors and amassing debt in anticipation that creditors cannot reach their assets, is just that, a doomsday reading of the language of this bill. For the large majority of consumers, if a person has a credit score that is low, they will not be entitled to easy credit and will not be able to afford luxury goods, cars, gold, etc., let alone amass a large amount of debt. If a person has a high credit score they are either paying their debts as they come due or paying the minimum amount due at a relatively high interest rate. Creditors can easily cut credit lines, reduce available credit, or escalate the interest rates for risky borrowers. Persons with low credit scores must pay their bills regularly to climb that credit score ladder to even buy a house, let alone an affordable car.

I had a case where the elderly debtors had some equity in their house. They are living on social security and meager sales of vintage collectibles, but not enough to pay all of their bills. If their house is worth \$180,000 and they owe \$90,000, they would only get \$30,000 homestead exemption and a trustee would get the rest to pay creditors. Can they buy another house for \$30,000? How long could they rent before those funds are gone? Maybe for two years they could rent if they don't need the money to replace the car or have medical treatment then they would be relying on government benefits.

A person who is current on their taxes, whether it be real property, general excise, income, or current on mortgage payments is more than likely guard their credit standing to be able to use credit when needed. The likelihood of a debtor going on a binge buying spree to max out credit cards and avoid paying creditors by using the protections of exemptions, is also not likely given most consumers self-interest in stability, good credit, and status in the community. Bad credit carries its own self-executing stigma when a consumer is facing possible

background checks for employment, government service, and new credit. Bad credit stays on a credit report for 7 to 10 years.

Homestead exemptions are not the sole source of asset protection. Asset protection already exist for consumers and business owners who own their real property as tenants by the entirety and do not have joint debts, regardless of whether the real property is a residence or not. The protection against judgment liens is extended to those couples who are entitled to take title as tenants by the entirety prior to the extension of credit to one of the couple, unless they voluntarily agree to liability. Protections already exist for certain corporate, partnership and limited liability company assets that cannot be reached by creditors of one of the shareholders, partners, or members of an entity owned by more than one interest holder. Those persons who can avail themselves of asset protections through planning and other legal shields, unlike most unsophisticated home owners, are more likely to have higher personal liability in a financial crises because they planned for protections.

Consumers who have \$31,000 or more in equity in their homes are not protected, no matter how long they have owned the home and no matter what financial disaster has occurred. Death of a spouse, temporary or permanent disability, job losses, taking on elderly family members without means to support themselves, can cause catastrophic financial debts. Creditor action can push debtors into liquidating assets needed for long term stability unless the debtors file for bankruptcy to exempt certain assets.

One of the best ways to deal with debt is to negotiate with creditors, but most people do not know how and creditors will not tell them how. A good consumer attorney can evaluate what is available to creditors as non-exempt property. If assets are at risk of liquidation in a bankruptcy case then the debtor must pay the creditors the value of those non-exempt assets; however, without the protection of federal bankruptcy court and a thorough evaluation of their assets, most people will give into the demands of creditors and liquidate assets that would otherwise be protected. CREDITORS KNOW THAT. A BETTER EXEMPTION SCHEME WOULD GIVE DEBTORS MORE TOOLS TO NEGOTIATE WITH CREDITORS AND CREDITORS WOULD BE LESS AGGRESSIVE.

If this legislation or similar legislation is not passed, we will continue to see a rise in bankruptcy filings when creditors become aggressive and the possibility of collection against non-exempt assets is threatened. Any time there is a financial crises, whether it is on a personal level or a systemic level, such as what was recently experienced after 9/11, or during the "Great Recession," the choice of bankruptcy or liquidation is available.

The problem in a Chapter 7 bankruptcy case comes from the failure of Congress to provide a specific exemption for tax refunds. Some states may have an exemption that can be applied to all or part of the tax refund, such as earned income credit. However, no dedicated federal exemption applies to tax refunds, other than the wildcard under 11 USC 522(d)(5). The chapter 13 bankruptcy trustee does not claim any part of the refund that is due to the child tax credit, which can be ascertained from the tax form submitted by the taxpayer.

There are sufficient creditor remedies in the statutes, both federal bankruptcy laws and state fraudulent conveyance laws to protect creditors from dishonest debtors. Debtors who binge on credit before filing bankruptcy are not likely to receive a discharge because aggressive actions by creditors or the United States Trustee Program to dismiss such cases resulting in stopping the entry of a discharge. Ponzi schemes do not protect the assets of a dishonest debtor in a federal bankruptcy case. See U.S. C. sec. 523 (a) (2). Exemptions do not provide practical protection to a debtor from being required to pay non-dischargeable debt after a bankruptcy case.

Most judgment creditors in Hawaii will garnish wages before they will try to collect from the debtor's personal possessions. In Hawaii, garnishment of wages is a continuing garnishment and is the most likely source of funds to pay most judgment creditors. That collection scheme is not touched by this legislation. Gold and precious metals and gems should not be considered "household goods" under any exemption scheme, unless they are actively used by the judgment debtor or members of their household. While that presents some proof problems, no protections should be given items placed in a safe deposit box with the exception of important personal papers. The existing H.R.S. section 651-121 does state the \$1,000 limit on watches, jewelry, and "items of personal adornment." Raising the limit does not remove the requirement that the item be for personal adornment. The proposed legislation for raising the exemption for household goods is not necessary. Other than items of personal adornment, the statute does not provide a dollar limit for the ordinary and necessary household furnishings and wearing apparel "personally used" by the debtor and family. As for other unlimited exemptions, Hawaii has always had an unlimited exemption for "tools of the trade" whether it is a contractor's vehicle or a Stradivarius violin.

This legislation is worthy of consideration for the impact it will have on the middle class and working poor. Can the legislature continue to support a population with greater and greater needs for government benefits or should the legislature empower individuals to create their own safety net. Indexing exemptions can be made a part of the exemption scheme and there are good examples in other states and in the bankruptcy code. With sufficient clarity for creditors, yes, they will take steps to improve their positions, and a fair and just exemption scheme will give them the tools to calculate who and when to give credit to. Adding consumer education component to the education curriculum would also improve individual's understanding of the credit markets and consumer finance.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara L. Franklin". The signature is fluid and cursive, with a large, stylized initial 'B'.

Barbara L. Franklin, Esq.
Attorney at Law

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Judiciary

Date: Thursday, January 21, 2016
Time: 2:00 P.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 375, H.D. 1, Relating to Property

The Department of Taxation (Department) **opposes** certain provisions of this measure and provides the following comments regarding H.B. 375, H.D. 1, for your consideration.

H.B. 375, H.D. 1, increases the threshold amount for real property to be exempt from attachment or execution to an unspecified amount, and states that attachment or execution does not apply to a debtor who is not delinquent in payment of income taxes, real property taxes, or mortgages. The measure also increases the amount of certain personal property which can be exempted from attachment and execution to the fair market value of those items as adjusted by the consumer price index. It also exempts from attachment and execution child support monies, tax refunds resulting from the federal earned income tax credit, and tax refunds resulting from federal or state child tax credit. The measure would apply to taxable years beginning after December 31, 2014 and is effective upon approval.

The Department first notes that federal liens, including tax liens, will not be affected by any state law restrictions which limit the seizure of property to satisfy claims of creditors. The federal government will only look to state law to determine if a taxpayer has an interest in a particular piece of property. Once it is determined that a taxpayer has an interest in property under state law, the focus then shifts to federal law to determine whether such interests qualify as property or rights to property to which a federal lien attaches, and if so, how that lien is collected. "[One] look[s] to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as 'property' or 'rights to property' within the compass of federal tax lien legislation." United States v. Craft, 535 U.S. 274 (2002); Drye v. United States, 528 U.S. 49, 58 (1999).

Second, with respect to the exemption for real property, the Department notes that there is no requirement that the property be used as a residence for the debtor. Even if a person does not reside on the property, the exemption will apply up to full amount established for the exemption. If this is not the intent of the Legislature to provide and exemption for all real property, the Department suggests clarifying this provision.

Third, proposed subsection (c) of section 651-92, Hawaii Revised Statutes (HRS), is confusing and needs clarification. The proposed subsection reads:

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

This subsection contains a double negative, and it is not clear exactly when it is intended to apply. It appears that it was intended to provide that execution or attachment is allowable if the debtor is delinquent in the payment of income taxes, real property taxes, or mortgages, however, the Department suggests clarification of the provision because it greatly broadens this real property exemption. For example, if another State agency files a lien for unpaid fines or penalties, it will not be able to collect on it against real property owned by the debtor if the debtor is current on income taxes, real property taxes, or mortgages income taxes, real property taxes, and mortgages.

Fourth, the potential conflict between subsection (b) and proposed subsection (c) of section 651-92, HRS, should be addressed. Subsection (b) provides that the section does not apply to process arising from a federal or state tax lien. Proposed subsection (c), as written, would only allow attachment or execution where the debtor who is delinquent in the payment of income taxes, real property taxes, or mortgages. This would result in the Department being unable to attach or execute a lien on real property for any tax besides income tax. For example, if the Department files a lien against the taxpayer for failure to pay general excise tax obligations, the Department would be unable to collect from any real property owned by the taxpayer the taxpayer if he or she is current on their income tax obligations. The Department suggests clarification of this potential conflict.

Fifth, the deletion of "who is either the head of a family or an individual sixty-five years of age or older" potentially broadens the definition of "person" to include entities. "Person" is generally defined to be an individual and any artificial entity. Exemptions from attachment and execution have never been granted to artificial entities. The Department suggests that this measure be clarified so that it is clear that the exemptions at issue only available to individuals.

The Department also opposes the increase in exemption to the fair market value of household goods, books, wearing apparel, jewelry, watches, and items of personal adornment, as well as one motor vehicle. While limited to individuals, the exemption is made without regards to whether such item is even remotely necessary for the welfare of the debtor and without regards to the value of the property. For example, a ring worth a million dollars would be

exempt simply because it is a piece of jewelry. Likewise, a debtor owning a valuable collector automobile would be exempt from execution and attachment merely because it is a motor vehicle.

Finally, the Legislature should clarify the proposed exemption for tax refunds resulting from a federal Earned Income Tax Credit (EITC) or from federal or state child tax credits. It is not clear whether the entire refund is exempt or if only the portion of a refund attributable to the EITC or to the child tax credits is exempt from execution. It is also not clear how a creditor would be able to tell if the amounts in a bank account are the result of such refunds, since the Department is unable to share confidential taxpayer information with others.

Thank you for the opportunity to provide comments.



January 20, 2016

Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
And Members of the Committee

RE: Testimony Supporting HB 375

Dear Sirs,

We are testifying in support of HB 375. As a reminder, this Bill would increase Hawaii state exemptions and allow debtors to protect a greater amount of their assets from creditors. We support this Bill because we are bankruptcy attorneys operating throughout the State of Hawaii and we see people struggling with the cost of living on a daily basis. Many of our clients work hard but are not paid a living wage and constantly struggle to support their families. If the Hawaii state exemptions remain where they are, debtors are left more vulnerable to creditors and are left choosing a federal exemptions scheme that does not take into account the uniqueness of living in Hawaii.

The increases in exemptions proposed are not extreme or extravagant. They would simply address the current gaps and provide debtors with reasonable, realistic assets that are essential to living independently (i.e., without government assistance). Creditors are not substantially prejudiced – these increases do not impact collateral securing loans, and other states with similarly situated exemptions have no shortage of credit available to residents. Creditors still have the ability to pursue income garnishment in collections. But a home remaining with a debtor instead of being seized by a creditor means a debtor keeps a roof over their family's head and is not left to become homeless. An automobile remaining with a debtor instead of being repossessed by a creditor means a debtor retains their transportation to work, therefore keeping a debtor employed and a paycheck coming in. Furthermore, once a bankruptcy blemishes a debtor's credit score, it becomes less likely any lender will offer a new loan so the debtor may purchase a replacement automobile or buy another home. Even finding a rental following a foreclosure becomes increasingly difficult. Retaining a vehicle and home is the most sensible option.

In conclusion, we strongly support HB 375 because it would greatly improve the economic conditions the citizens of Hawaii live by on a day-to-day basis. Thank you for your consideration.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'W. Richard Abelmann'.

W. Richard Abelmann
Christopher T. Rollins

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 20, 2016 1:25 PM
To: JUDtestimony
Cc: reedlaw808@gmail.com
Subject: *Submitted testimony for HB375 on Jan 21, 2016 14:00PM*

HB375

Submitted on: 1/20/2016

Testimony for JUD on Jan 21, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Madeline M. Reed	Attorney at Law	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HAWAII FINANCIAL SERVICES ASSOCIATION

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January 21, 2016

Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 375, H.D. 1 (Property)**
Hearing Date/Time: Thursday, January 21, 2016, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **opposes** this Bill as drafted.

The purposes of this Bill are to: (a) amend the threshold amount for the exemption of real property from attachment or execution and exempt a debtor who is not delinquent in income taxes, real property taxes, or mortgages; (b) base the personal property exemption from attachment and execution on fair market value; and (c) exempt child support, EITC refunds, and child support tax credit.


During the 2015 Legislative Session, this Bill was heard by the House Committee on Consumer Protection and Commerce on February 4, 2015. The HFSA submitted testimony opposing this Bill, as introduced.

The HFSA similarly opposes the House Draft 1 version of this Bill. We believe that some of the proposed changes in this Bill will enable and encourage certain debtors, who have properties with equity, to avoid paying their contractual obligations. Additionally some of the provisions in this Bill are vague and confusing. This Bill, as drafted, does not seem to be sound public policy.

We incorporate by reference the various concerns raised in the testimonies of the Collection Law Section of the Hawaii State Bar Association and the Hawaii Bankers Association.

Accordingly, we ask that your Committee "hold" this Bill and not pass it.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Thursday, January 21, 2016 at 2:00 P.M.
Conference Room 325, State Capitol**

LATE

RE: HOUSE BILL 375 HD1 RELATING TO PROPERTY

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 375 HD 1, which allows temporarily unemployed workers and their families to retain their assets and be able to support themselves in times of personal economic crisis.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

One concern of this bill is the personal property portion vaguely states calculations of personal property exemptions will be based on, "fair market value of such items as adjusted by the most recent consumer price index." This statement is confusing and, without an agency to uphold a standard, can lead to widely varying estimations.

In addition, HB 375 HD1 would weaken the ability of creditors to recover payments from borrowers' loan obligations. While the bill dramatically expands exemption, this may lead lenders to tighten policy of credit products and eliminates any limitation on exemption from attachment. Also, dishonest debtors would receive nearly unlimited exemptions from various types of debt. The bill could cause commercial lenders to become hesitant, drying up potential available credit for the individuals and families, and hurting the people it intends to help.

Thank you for the opportunity to testify.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

LATE

January 20, 2016

The Honorable Karl Rhoads, Chair,
The Honorable Joy A. San Buenaventura, Vice Chair, and
Members of the House Judiciary Committee
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: House Bill 375, HD1 Relating to Property

Chair Rhoads, Vice Chair San Buenaventura, and Committee Members:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service or support the origination and servicing of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending and servicing.

The MBAH opposes House Bill 375, HD1 and concurs with the testimony presented by the Collection Law Section of the Hawaii State Bar Association. House Bill 375, HD1 will impede the collectability of mortgages and home equity loans which were provided to borrowers in good faith. Mortgage lenders will have to look for other means of collecting any deficiency judgment.

Mortgage lenders may take a closer look at their lending policies which may have an impact on the availability of mortgage credit products for the consumer to mitigate any losses a lender may incur.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA
Mortgage Bankers Association of Hawaii

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 20, 2016 10:31 PM
To: JUDtestimony
Cc: mjgolo@email.phoenix.edu
Subject: Submitted testimony for HB375 on Jan 21, 2016 14:00PM

HB375

Submitted on: 1/20/2016

Testimony for JUD on Jan 21, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	Yes

Comments: It is way past time to update this important legislation to help the people of Hawaii.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony to the House Committee on Judiciary
January 21, 2016

LATE

Testimony in Opposition to HB 375, Relating to Property

To: The Honorable Karl Rhoads, Chair
The Honorable Joy San Buenaventura, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 69 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are opposed to HB 375 HD1.

Approximately 50 of Hawaii's credit unions currently offer mortgages and other forms of credit to their members. Credit unions are nonprofit organizations whose members ultimately bear any losses. Occasionally, members default in payment of their obligations, and a credit union may have to take legal action to collect the debt. If the credit union cannot collect the debt, its members suffer the loss.

Thus, we oppose HB 375 HD1, and concur with the testimony presented by the Collection Law Section of the Hawaii State Bar Association.

Thank you for the opportunity to provide comments.

JUDtestimony

From: David C. Farmer <farmerd001@gmail.com>
Sent: Wednesday, January 20, 2016 7:44 PM
To: JUDtestimony
Cc: 'Marvin S. C. Dang'; Steven Guttman
Subject: HB375 HD1: Jan 21, 2016 14:00PM in Conference Room 325
Attachments: testimonyFINAL.pdf

Importance: High

Please note that my attached testimony originally submitted on 1/20/2016 and re-submitted today was corrected only to reflect that my testimony is on behalf of the HSBA Collection Law Section, not myself individually. The minutes should report this as timely filed testimony on behalf of the Section.

Mahalo.

DAVID C. FARMER ATTORNEY AT LAW LLLC

David C. Farmer
225 Queen Street, Suite 15A
Honolulu, Hawaii 96813
farmerd001@gmail.com

Tel: 808-222-3133
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LATE

Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
Lynn Araki-Regan
Marvin S.C. Dang
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Elizabeth A. Kane
William J. Plum
David B. Rosen
Andrew Salenger
Mark T. Shklov
Yuriko J. Sugimura
Thomas J. Wong
Reginald K.T. Yee

Reply to: **STEVEN GUTTMAN, CHAIR**
220 SOUTH KING STREET SUITE 1900
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177
E-MAIL: sguttman@kdubm.com

January 20, 2015

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice-Chair
House Judiciary Committee

Re: HB 375, HD 1 Relating to Property
Hearing: Thursday, January 21, 2016, 2:00 p.m.

Dear Chair Rhoads, Vice-Chair San Buenaventura and Members of the Committee:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association ("CLS").¹ It incorporates testimony I submitted during the last legislative session to the House Committee on Consumer Protection and Commerce for its hearing on the bill on February 4, 2015. In addition, attached is a copy of my article from the Hawaii Bar Journal dealing with this bill and its many problems.

I have been practicing law for more than 30 years in Hawaii in the areas of collections and bankruptcy law for both creditors and debtors. I have taught at the William S. Richardson School of Law as a Visiting Professor and served as a Chapter 7 Trustee for the Hawaii United States Bankruptcy Court. I have attached my Curriculum Vita for your reference.

The CLS continues to believe that the bill's aim, "to create a safety net of assets for Hawaii families who struggle to earn a living under heavy debt obligations," is on its face laudable, but a closer look reveals its flaws.

Specifically, as for the personal property portion of the bill in section 651-121, is extremely problematic. How is someone supposed to calculate the personal property exemptions based on "the fair market value of such items as adjusted by the most recent consumer price index" or "the fair market value of the vehicle as adjusted by the most recent consumer price index"? Those phrases are vague and confusing, leading to possible varying calculations. What agency will maintain these standards?

1. The comments and recommendations submitted reflect the position and viewpoint of the Collection Law Section of the HSBA. The position and viewpoint has not been reviewed or approved by the HSBA Board of Directors and is not necessarily the same of the Hawaii State Bar Association.

The proposed amendment to the real property exemption in section 651-92 would essentially eliminate execution upon real property as a remedy for judgment creditors, the sole remedy that exists as a practical matter. This is so even though HD 1 now adds to HRS 651-92(a) dollar amount to its proposed exemptions, although its elimination of the requirement that the property serve as a debtor's residence essentially eviscerates the reason for the exemption in the first place.

Moreover, proposed HRS 651-92(c) provides that

Attachment or execution shall not apply to a debtor who is not delinquent in payment of income taxes, real property taxes, or mortgages, as applicable.

Debtors with real property would be rendered judgment proof from debts of all kinds, including tort judgments for personal injury (as in, for example, wrongful death, assault, fraud, and related intentional and negligent torts) as well as debts for public services such as hospital and medical services. Such unintended consequences would not be wise as a matter of public policy.

In addition, the Committee should note that any amendment to the existing exemption scheme will impact not only State court debtors, but also potentially federal bankruptcy debtors and their estates, which could be seriously compromised by essentially unlimited exemptions through debtors opting out of the less generous federal exemptions. Individuals harmed by dishonest debtors, for example, who have defrauded consumers through Ponzi schemes, would not be able to recover anything in satisfaction of their claims.

Finally, the chilling impact upon commercial lenders would be substantial, resulting in the potential drying up of available credit to the very population this bill seeks to help: Hawaii's families.

Thank you for your consideration of the Section's comments and concerns.

/s/ David C. Farmer

Director
Collection Law Section of the HSBA

cc: Steven Guttman
Patricia A. Mau-Shimizu

DCF\sb779-5.cls (W/ ATTACHMENTS)

HAWAII STATE EXEMPTIONS FROM ATTACHMENT AND EXECUTION: TIME FOR AN OVERHAUL?

David C. Farmer

The Proposed Legislation

During Hawaii's 28th legislative session in 2015, two measures (HB 375 H.D.1 and SB 993) titled "Relating to Property" proposed to (1) amend the threshold amount for the exemption of real property from attachment or execution¹ initially to the fair market value of the property (essentially giving debtors an unlimited exemption as do Florida and Texas exemption statutes); (2) completely exempt a debtor who is not delinquent in income taxes, real property taxes, or mortgages; (3) amend the personal property exemption for an automobile be based on fair market values;² and (4) exempt child support, EITC refunds, and child support tax credit from attachment and execution.

The purpose of the bills was stated to be "to create a safety net of assets for Hawaii families who struggle to earn a living under heavy debt obligations."

After receiving only one supporting testimony in favor³ and opposition from several others in both House and Senate hearings, including the Department of Taxation and the Attorney General, the House bill was amended to provide a blank amount to presumably raise the real property exemption from \$30,000, the amount in effect since 1978.

Both measures died in committee but remain to be considered next session.

Definitions

Black's Law Dictionary defines an exemption as a "privilege allowed by law to a judgment debtor, by which he may retain property to a certain amount or certain

¹ Since 1978, Haw. Rev. Stat. § 651-92 has provided exemptions of \$30,000/\$20,000. Prior to 1978, the amounts were \$20,000/\$10,000.

² Haw. Rev. Stat. § 651-121 provides specific dollar amounts for vehicles.

³ The sole favorable testimony came from a bankruptcy practitioner who noted that, "if [the current exemptions] had been indexed to the consumer price index at the time they were passed 35 years ago, the value of those exemptions would have truly protected Hawaiians' participation in the middle class."

classes of property, free from all liability to levy and sale on execution, attachment, or bankruptcy.” For over a century, exemption laws have protected debtors and their dependents, and afforded them significant rights.

Execution can refer to any method of enforcing a money judgment. However, in debt collection, execution usually refers to the specific method of getting a writ of execution from the court clerk to give to the sheriff authorizing the seizure of the debtor’s property and sell it so that the net proceeds can be given to the creditor in satisfaction of its debt.

After the sale, the money collected is first used to pay the expenses of the sale. In some states, including Hawaii, if there are any liens on the property that are senior to the judgment creditor, then the buyers must accept the property with the senior liens. Junior liens are effectively extinguished; junior creditors do not receive anything from the distribution, nor do their liens survive the sale of that particular property. The judgment creditor is paid up to the amount of the judgment with the balance, if any, going to the debtor as an exemption.⁴

Although the modern law of execution derives from the common law writ of *fi fieri facias*, today it is largely determined by state law.⁵ Only a creditor with an unpaid, unsecured debt needs to resort to execution. A secured creditor can, in most cases that do not include mortgages, take or foreclose on the collateral without going to court or using the sheriff.

Although the purpose of exemption laws is to provide a minimum means of survival for an individual or a family, the relationship between what is exempt and what is necessary for survival is a very tenuous one. Indeed, especially considering that everyone has the same basic needs for survival, exemption laws vary greatly

⁴ See Schuler v. Wallace, 607 P.2d 411, 61 Haw. 590 (1980):

The last paragraph of the present § 651-95 (1979 Supp.) directs that if the sale of real property is made, the proceeds “shall be applied in the following order of priority: first, to the defendant to the amount of the exemption; second, to the satisfaction of the execution costs, attorney’s and appraiser’s fees; and any other fees that may necessarily arise; third, to the satisfaction of the lien under which the sale is made; fourth, to the discharge of any subsequent liens and encumbrances according to their priority, and fifth, the balance, if any, to the defendant.”

⁵ See Haw. Rev. Stat Chapter 651 (Part I, Attachment and Part II, Execution). For a complete description of attachment and execution practice, see 2013 HAWAII COLLECTION & BANKRUPTCY LAW MANUAL, published by Hawaii Bankruptcy Bar Association.

among the states. Part of this variation and the meager exemptions allowed by many states stem from the fact that many of the laws were enacted in the 1800s and have not been updated since. State exemptions are not adjusted for inflation.

However, exempt property does make it more difficult for the sheriff to levy property, because the debtor could be entitled to damages if exempt property is levied. In most cases, the creditor must post a bond or indemnify the sheriff for the possibility of taking exempt property, or the creditor may even get a court order to declare that certain property is nonexempt, if the property's status is unclear.

Exemption Laws History

All states have laws that exempt certain property from being levied by unsecured creditors. Exemption laws do not apply to the collateral of a secured creditor. These are the same exemptions used in Chapter 7 under the Bankruptcy Code, although 18 states allow the use of federal exemptions for bankruptcy.

Exemption laws arose in the United States for various reasons. Canons of decency in early English common law initially provided debtors an exemption for necessary clothing. English common law eventually evolved to include exemptions for bare essentials, clothing, bedding, and tools of trade. However, these laws reflected little tolerance for debtors and recognized exemptions for bare essentials and only those minimal assets necessary for the debtors' survival.

In the United States, the northeastern states adopted similar restrictive exemption laws, while the southern and western states responded to the economic depressions of the eighteenth and nineteenth centuries by enacting exemption laws that provided debtors with greater protection.

Early exemption laws were also enacted as a way to encourage settlement. For instance, the Federal Homestead Act of 1862 exempted newly acquired land from debts accrued prior to the debtor's acquisition of the land. Additionally, many states enacted their own homestead laws that exempted the homestead and, in some states, a certain amount of personal property.

Purposes of Exemption Laws

Exemption laws serve a variety of purposes. First, exemption laws promote societal interests. Courts have held public policy supports affording debtors with

exemption rights.⁶ One primary policy reason for exemption laws is to “protect the family unit from impoverishment, relieve society of the burden of supplying subsidized housing, and provide debtors with a means to survive”⁷ Exemption laws have also been found to promote the following social functions, including to:

- (1) provide the debtor with property necessary for his or her physical survival;
- (2) protect the dignity, culture, and religious identity of the debtor;
- (3) enable the debtor to rehabilitate himself or herself financially and earn income in the future;
- (4) protect the debtor’s family from adverse consequences of impoverishment; and
- (5) shift the burden of providing the debtor and his or her family with minimal financial support from society to the debtor’s creditors.⁸

Another purpose of exemption laws is to rehabilitate the debtor and to encourage the repayment of debts. Exemption laws emphasize rehabilitation of the debtor by exempting wages and occupation-related items to allow the debtor to continue working and hopefully to enable the debtor to repay his or her debts. For example, if wage garnishment was unlimited, creditors would be able to garnish the debtor’s entire paycheck, leaving the debtor with little incentive to keep working. Furthermore, if the debtor were not able to exempt occupation-related items such as tools, the debtor might also be unable to work. By exempting wages and occupation-related items, debtors are encouraged to keep working and, accordingly, repay their debts.

Exemption laws also helped some debtors avoid bankruptcy, beneficial to both debtors and creditors. Bankruptcy avoidance also extends creditors the

⁶ See, e.g., Bertozzi v. Swisher, 81 P.2d 1016, 1017 (Cal. Ct. App. 1938) (“the fundamental reason for the enactment of exemption laws is to protect a person, whatever his occupation might be, from being reduced by financial misfortune to abject poverty . . .”).

⁷ Norwest Bank Neb. v. Tveten, 848 F.2d 871, 876 (8th Cir. 1988).

⁸ In re Ellingson, 63 BR. 271, 277-78 (Bankr. N.D. Iowa 1986)); see also Tveten, 848 F.2d at 876.

opportunity to recover the debt owed to them, whether it is voluntarily paid by the debtor or by garnishment of the debtor's wages or assets.

State Law Exemptions

A wide disparity exists in the type and amount of exemptions allowed by different states, although some exemptions are common in all jurisdictions. The language of statutes providing for exemptions at the state level also varies. Some statutes use the word "exempt" to describe the property the debtor may shelter from the claims of creditors. The word "exempt" is commonly left undefined, but is generally held to protect the property described from all forms of legal process. Another type of exemption statute provides for the exemption of property from "all process." These statutes list the types of process, such as garnishment, attachment, or sale of execution that creditors may not utilize, in satisfying their claims, to obtain the property listed in the statute.

Most exemption statutes provide protection for housing, clothing, food, life insurance,⁹ earnings, and personal and household possessions. Many also include a dollar amount exemption. State exemption laws are often based on the common needs of residents.¹⁰ For example, North Dakota's exemption scheme provides for crops and grains,¹¹ Arizona's provides for firefighting equipment,¹² and California's provides for jewelry, heirlooms, and works of art.¹³

Some exemptions apply to specific property, but have unlimited value. Most of these exemptions apply to property that would almost certainly not have much value and would be difficult to sell, such as appliances, specific types of furniture, and Bibles. However, many states also exempt pensions, public benefits, and certain insurance payments without a value limit. Most types of retirement plans such as 401(k) plans are fully exempt regardless of the state of domicile because they are exempt by federal law.

⁹ This exemption rests on the theory that a creditor cannot claim any equity in a fund that has not been used as a basis for credit. Reiff v. Armour & Co., 139 P. 633, 635 (Wash. 1914).

¹⁰ See Poznanovic v. Maki, 296 N.W. 415, 417 (Minn. 1941). The court recognized the legislature based exemptions provided to its citizens upon "their individual circumstances and necessities . . ." *Id.* (quoting Grimes v. Bryne, 2 Minn. 89, 104 (Minn. 1858)).

¹¹ See N.D. CENT. CODE § 28-22-02(8).

¹² See ARIZ. REV. STAT. ANN. § 33-1128.

¹³ See CAL. CIV. PROC. CODE § 704.040 (not to exceed \$6,075).

Federal Law Exemptions

The federal law exemptions are utilized by debtors when filing a petition for bankruptcy and can be found in the Bankruptcy Code in 11 U.S.C. § 522.¹⁴ This section lists categories of property a debtor may claim as exempt and places value limits on that property.¹⁵ Congress has given states the right to “opt-out” of the federal exemption scheme.¹⁶ If the debtor’s state has not “opted-out” of the federal exemption scheme, the debtor is able to choose the federal exemptions or the debtor’s state law exemptions when filing a petition for bankruptcy.¹⁷

Although the United States Constitution gave the federal government authority over bankruptcies,¹⁸ many argued that states should have the right to regulate exemptions, because state exemptions already existed for debtors which is why many state exemptions have existed since the 1800s.¹⁹ Proponents of the Bankruptcy Reform Act of 1978 wanted to make the federal exemptions the only exemptions, but proponents of states’ rights wanted to keep the state exemptions. A compromise was reached, so the Bankruptcy Reform Act required the use of federal exemptions unless the states decide to opt out. Many debtors took advantage of the law’s weakness by moving to states that had the highest exemptions. This ploy was

¹⁴ See 11 U.S.C. § 522 (2010). A debtor filing a petition for bankruptcy may exempt property provided for in § 522(d) of the Bankruptcy Code or property provided for in the debtor’s state law exemptions unless the debtor’s state law specifically authorizes against the use of federal exemptions. *Id.* § 522(b).

¹⁵ 2 COLLIER BANKRUPTCY MANUAL § 522.01 (4th ed. 2011), § 522.09. The value limits of certain exemptions are adjusted every three years to reflect changes in the Consumer Price Index for All Urban Consumers, which is published by the Department of Labor. 11 U.S.C. § 104(b)(1).

¹⁶ Currently, the following 32 states have “opted-out” of the federal exemption scheme by enacting legislation prohibiting their residents from electing the federal exemptions: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. WEST’S BANKRUPTCY EXEMPTION MANUAL, 2014-2015 ed. 48, § 4:2.

¹⁷ 11 U.S.C. § 522(b). If the debtor chooses to claim exemptions under state law, the state under whose law the debtor must claim exemptions is the state in which the debtor has been domiciled for 730 days preceding the filing of the bankruptcy petition. *Id.* § 522(b)(3)(A). If the debtor had not been domiciled in one state for the entire 730 days, the applicable state law is that of the state in which the debtor was domiciled for 180 days immediately preceding the 730-day period or for the longer portion of the 180 days. *Id.*

¹⁸ UNITED STATES CONSTITUTION, Article I, Section 8, paragraph 4: “To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.”

¹⁹ This is also why many state exemptions have a very low value, because they have not been updated since the 1800s or early 1900s.

considerably weakened, but not eliminated, by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) that instituted state residency requirements for claiming state exemptions. However, if only federal exemptions were permitted in the 1978 Act without allowing the states to opt out, then debtors would not have been able to take advantage of the system, and the new state residency requirements in the BAPCPA would have been unnecessary.

The bankruptcy law using only federal exemptions would not only have made it more fair by giving everyone the same exemptions, but it would have prevented 27 years of abuse and would have simplified bankruptcy considerably by eliminating from consideration the exemptions of each state and state residency requirements from the Bankruptcy Code.

The amounts allowed under the federal bankruptcy exemptions are adjusted every three years ending on April 1 to reflect changes in the Consumer Price Index. The federal bankruptcy exemptions were last adjusted in 2013.²⁰

²⁰ If married and filing jointly, a debtor may double all of the federal bankruptcy exemptions such as claim a homestead exemption of \$45,950 (double the listed homestead exemption amount of \$22,975). If a dollar amount does not accompany a listed piece of property, the entire value of the property is exempt. All code references are to 11 U.S.C. (Title 11, United States Code).

Homestead

§ 522(d)(1), (5) - Real property, including mobile homes and co-ops, or burial plots up to \$22,975. Unused portion of homestead, up to \$11,500 may be used for other property.

Personal Property

§ 522(d)(2) - Motor vehicle up to \$3,675.

§ 522(d)(3) - Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$575 per item, and up to \$12,250 total.

§ 522(d)(4) - Jewelry up to \$1,550.

§ 522(d)(9) - Health aids.

§ 522(d)(11)(B) - Wrongful death recovery for person you depended upon.

§ 522(d)(11)(D) - Personal injury recovery up to \$22,975 except for pain and suffering or for pecuniary loss.

§ 522(d)(11)(E) - Lost earnings payments.

Pensions

§ 522(b)(3)(C) - Tax exempt retirement accounts (including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans).

§ 522(b)(3)(C)(n) - IRAs and Roth IRAs to \$1,245,475.

Public Benefits

§ 522(d)(10)(A) - Public assistance, Social Security, Veteran's benefits, Unemployment Compensation.

§ 522(d)(11)(A) - Crime victim's compensation.

Tools of Trade

The Bankruptcy Code and some states, but not Hawaii, provide a wildcard exemption, an amount that can be applied to any property or divided among several properties where the total does not exceed the limit. However, the amount is usually low.

As with other federal exemptions, these amounts are doubled if filing jointly. If both spouses file for bankruptcy jointly, then most states and the federal government allow each spouse to claim the full amount of the exemption. In Hawaii, the real property exemption can only be taken by one person. Hence, Hawaii debtors almost always elect federal exemptions, since the current homestead exemption for a married couple is \$45,950 compared to the existing state exemption of \$30,000.

However, if the property was bought with a loan secured by the property, then the trustee will only sell the item if there is significantly more than enough to pay an exemption and pay the secured creditor; otherwise, there would be little or no money left for unsecured creditors or the trustee's commission. For example, in New York, the exemption for a motor vehicle is only \$4,000. If a car bought with a secured loan has a fair market value of \$12,000, and \$6,000 is owed on the loan, a trustee will sell the car, pay the \$4,000 exemption, the secured creditor \$6,000, and use the remaining \$2,000 minus the trustee's fee to pay unsecured creditors.

The Internal Revenue Code limits the amount of property that is exempt from levy for unpaid taxes.²¹

§ 522(d)(6) - Implements, books and tools of trade, up to \$2,300.

Wildcard

§ 522(d)(5) - \$1,225 of any property, and unused portion of homestead up to \$11,500. The purpose of allowing a debtor to add any unused portion of the homestead to this exemption value limit is to ensure non-homeowners are not discriminated against when filing for bankruptcy.

If a debtor resides in a state that has not opted-out of the federal exemption scheme, and has chosen to use state law exemptions, a debtor may not exempt any amount of interest acquired during the 1215-day period prior to filing bankruptcy that exceeds \$155,675 in real or personal property that the debtor uses as a residence. § 522(p)(1). For example, if a debtor living in Rhode Island, which has a \$500,000 homestead exemption and has not opted-out of the federal exemption scheme, chose to utilize state exemption laws, the Rhode Island state law homestead exemption of \$500,000 would be limited to \$155,675 if the home had been acquired during the 1215-day period prior to filing bankruptcy. In essence, this section limits a debtor's "forum-shopping" for states with liberal homestead exemptions.

²¹ I.R.C. § 6334 exempts certain property, adjusted for inflation, from levy by the IRS. Most of this property allows a household to maintain a minimum living, but the exemption is subject to maximum values, which depend on the type of property. Personal property includes clothing, school books, fuel, provisions, furniture, and personal effects. Additionally, income received from unemployment benefits, public assistance payments, or workmen's compensation are fully exempt. If the taxpayer must pay child support, then any other income is exempt so as to allow the taxpayer to continue child-support payments.

Critique of Proposed Legislation

Although the aim of the bills is on its face laudable, a more critical analysis reveals their flaws.

First and foremost, the chilling impact upon commercial lenders could be substantial, resulting in the potential drying up of available credit to the very population this bill seeks to help: Hawaii's families.

As the Department of the Attorney General noted in its opposition, the bills would effectively prohibit state agencies from using judgment liens to collect moneys owed to them. Specifically, as for the personal property portion of the bill in Hawaii Revised Statutes §§ 651-121(1) and (2) that exempt from attachment and execution certain personal property and one vehicle, up to fair market value, plus an upward adjustment for the consumer price index, these amendments would allow debtors to shelter money from creditors by purchasing vehicles, gold, diamonds, luxury watches, jewelry, and other high value commodities.

Moreover, the wording is extremely problematic. How does one calculate the personal property exemptions based on "the fair market value of such items as adjusted by the most recent consumer price index" or "the fair market value of the vehicle as adjusted by the most recent consumer price index"? These phrases are vague and confusing, leading to possible varying calculations. What agency will maintain these standards?²²

The proposed amendment to the real property exemption in Haw. Rev. Stat. § 651-92 would essentially eliminate execution upon real property as a remedy for judgment creditors, frequently the sole practical remedy. Amended § 651-92(a) would enable debtors to shelter money from state agencies in the form of equity in

The amount of working income that is less than the taxpayer's standard deduction plus all personal exemptions to which he is entitled to is also generally exempt.

²² Worthy of note is the fact that, as of this date, no state exemption scheme provides for CPI adjustments, only the Bankruptcy Code since 2005.

Mr. Farmer has served on the Publications Committee since 1991. His thirty-year practice has concentrated on collections and bankruptcy. He has been a member and officer with the HSBA Collection Law Section and prepared the testimony in opposition to the subject bills. He was also an editor and contributor to the four editions of the Hawaii Collection & Bankruptcy Law Manual; and, since 2005, a contributor to West's Bankruptcy Exemption Manual on Hawaii exemption laws.

any real property, up to its real property tax assessed value, including a home of any value, even high-end properties.

Debtors with real property would be rendered judgment proof from debts of all kinds, including tort judgments for personal injury (as in wrongful death, assault, fraud, and related intentional and negligent torts) as well as debts for public services such as hospital and medical services. Such unintended consequences would not be wise as a matter of public policy.

Any amendment to the existing exemption scheme will impact not only state court debtors, but also potentially federal bankruptcy debtors and their estates. Creditors' claims could be seriously compromised by unlimited exemptions by debtors opting out of the less generous federal exemptions. Individuals harmed by dishonest debtors, for example, who have defrauded consumers through Ponzi schemes, would not be able to recover anything in satisfaction of their claims.

The new subsection Haw. Rev. Stat. § 651-92(c) bars any judgment lien from attaching or executing on a property owned by a debtor who is current on all income taxes, real property taxes, or mortgage payments. The effect of this addition creates a debtor's shelter from creditors, including state agencies. Such debtors could generate huge debt, default on those debts, and then leave judgment creditors with no recourse against the debtor's property.

The amendments to Haw. Rev. Stat. § 651-121 exempt from attachment and execution child support money comingled in a bank account and tax refunds from federal earned income tax credits and from federal or state child tax credits. As noted in the Attorney General's testimony, these amendments would effectively prohibit state government from collecting moneys using the tax refund setoff statute. This bar would negatively impact the Child Support Enforcement Agency's operations and resources. There is also a question as to whose burden of proof it is to show whether amounts are attributable to child support. Limiting the type of tax refunds that can be attached could very well jeopardize Federal welfare funding and Federal funding of the child support enforcement programs.

Taken as a whole, the proposed legislation is seriously flawed and requires a fresh re-examination.

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Deutsche Bank (*In re Hawaiian Airlines*)
Cummins-Allison (*In re Amro-Asian Trading*)

Chapter 11 Bankruptcy Trustees:

James Nicholson (*In re Abigail Kawananakoa*)
Wendell F. Brooks, Jr. (*In re Lots Wako*)

State Court Receivers and Commissioners

Wendell F. Brooks, Jr. (*International Commercial Bank of China vs. L&L (USA) Inc.*)

Rebecca Yee and Benjamin Fujimoto, Co-Receivers

(*Pacific Educational Services Company, dba Hawaii College of Pharmacy*)

Central Pacific Bank

First Hawaiian Bank

Pizza Hut Hawaii

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CHAPTER 11 TRUSTEE

Hawaii Outdoor Tours, Incorporated; Case No. 12-02279

United States Bankruptcy Court, District of Hawaii (2013 – 2015)

CREDIT ABUSE RESISTANCE EDUCATION PROGRAM

United States Bankruptcy Court, District of Hawaii

Participant (2008 – present)

CHAPTER 7 PANEL TRUSTEE

United States Bankruptcy Court, District of Hawaii (2007 – 2012)

EXPERT WITNESS

Oliver, Lau, Lawhn, Ogawa & Nakamura vs. Edward Komei Yamashiro et al., Civil No. 04-1-2394-12 SSM, Circuit Court of the First Circuit, State of Hawaii (2006-2008)

Lepere vs. Neeley & Anderson, et al., Civil No. 96-4426-10

First Circuit Court, State of Hawai'i (1998)

ARBITRATOR

Court Annexed Arbitration Program (1995 - present)

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Justice Frank Padgett, Supreme Court of Hawai'i (1985)

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Honolulu City and County Prosecutor's Office (1985)

PUBLICATIONS:

The Tension between the FDCPA and the Bankruptcy Code: Who's on First?

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CURRICULUM VITAE
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PUBLICATIONS:

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When Does the Lien of An Exemplified Foreign Judgment Expire in Hawaii?"

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*Executory Contract; or, Does "Penalty" Modify "Rate" or "Rate and Provision" in
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*Hawai'i's Federal District Court Judges Differ on Interpretation of Federal Fair Debt
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Haw. B. J. (October 2005)

Lyn Flanigan Anzai: HSBA Executive Director

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A New Federal Common Law of Property: Reflections on Craft v. U.S.

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UH Curriculum Research & Development Group and University of Hawai'i Press

(2002) (2003 Ka Palapala Po'okela Award for Excellence in Literature)

Bouncing Off the Walls: A Tiny Acorn of Dispute

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The Legal Legacy of Sanford Ballard Dole

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CURRICULUM VITAE
DAVID C. FARMER, ESQ.

PUBLICATIONS:

*Of Art and Golf, Learning and the Internet:
Adventures in New Museum Opportunities*
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Small Claims Court for Pro Se Debt Collection
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Post-Judgment Interest: A Compound Problem?
Haw. B. J. (July 2000)

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*Attorney's Fees & Costs:
Hawai'i's Appellate Courts Impose New Limitations on Recovery*
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Haw. B. J. (January 1999)

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*The Trial of the Queen:
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Haw. B. J. (March 1997)

Doing Business in Asia: Hawai'i's Trade Mission to China
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Hawai'i's Amended Little Miller Act: A Catch-22 for Gap Claimants?
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Haw. B. J. (June 1996)

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Hawai'i's Lawyers Continue Tradition of Charitable Works

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Hawai'i Adopts Article 2A of the Uniform Commercial Code

Haw. B. J. (December 1992) (also available on WESTLAW)

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Haw. B. News (March, May 1991)

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Govern Payments of Unpaid Employment Taxes in Bankruptcy?

(co-author Ray K. Kamikawa, Esq.)

XXI Haw. B. J. 99 (1987), **62 Am. Bankr. L. J. 341** (1988)

Writing with Light:

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7 COMM/ENT 111

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Honolulu Magazine, June 1977

SEMINARS

AND MANUALS:

The Tension between the FDCPA and the Bankruptcy Code: Who's on First?

HBBA Fall Conference (November 2015)

Bankruptcy and Consumer Debt Issues

HSBA Access to Justice Conference (June 2015)

Chapter 15 - Ancillary and Other Cross-Border Cases

Hawaii-Japan Insolvency Law Symposium

Institute of Asian-Pacific Business Law, William S. Richardson School of Law, and

Insolvency Practitioners Research Group Japan (February 2015)

Selected Current Issues of Legal Ethics and the Practice of Law

HSBA Collection Law Section (August 2014)

Hawai'i Collection and Bankruptcy Law Manual

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Bankruptcy Law for Paralegals

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Landlord-Tenant Law

Sterling Education Services, Inc. (Sterling) (June 2012)

Collection Law from Start to Finish

National Business Institute (NBI) (August 2011, July 2015)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Post-Judgment Collection Strategies

HSBA Collection Law Section (August 2011)

Judgment Enforcement

Lorman Education Services (Lorman) (July 2011)

U.S. Bankruptcy Court Calendar/Deadlines for Paralegals

HSBA (April 2011)

The Fundamentals of Real Property Foreclosure in Hawaii

NBI (April 2011, March 2014)

Ethics for Bankruptcy and Collection Lawyers

HSBA Collection Law Section Annual Meeting (December 2010)

HSBA (September 2010)

Bankruptcy in Hawaii

Lorman (November 2010)

Bankruptcy for Legal Support Staff

HSBA (September 2010, August 2012)

Real Property Foreclosure: A Step-by-Step Workshop

NBI (April 2010)

The Mortgage Crisis and Bankruptcy

Bankruptcy Law Section, Hawai'i State Bar Association (HSBA) (June 2009)

Bankruptcy: Strategies for Prevention and Planning

Hawai'i Credit Union League (HCUL) (February 2009)

Nuts and Bolts: Hawaii Debt Collection

HSBA Continuing Legal Education Program (January 2009)

Foreign Judgments – Their Care and Handling

Collection Law Section, HSBA (May 2008)

The Automatic Stay: Abstention and Issues of Federal/ State Jurisdiction in Bankruptcy

HSBA Continuing Legal Education Program (March 2008)

Landlord-Tenant Manual Update

Contributor

HSBA Continuing Legal Education Program

(December 2007; May/June 2008 Neighbor Islands Road Show)

Family Law & Spousal Bankruptcy: A Review of Bankruptcy Laws Specific to Family Law

HSBA Continuing Legal Education Program (October 2007)

Commercial Real Estate Financing in Hawaii

Lorman (February 2006)

Annulment: A Family Law Dinosaur?

HSBA Hawai'i Divorce Manual (November-December 2000; October 2005, 2007)

Bankruptcy Exemption Manual

Contributor

West's Bankruptcy Series (2005 - 2016 eds.)

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DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Revised UCC Article 9 Secured Transactions: What Hawaii Practitioners Need to Know
NBI July 2005

How to Successfully Collect on Judgments in Hawaii
NBI (May 2005, 2006)

Collection Techniques and Law in Hawaii
Lorman (April 2005)

Landlord and Tenant Law in Hawaii
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Nuts and Bolts of Debt Collection
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Advanced Collection Strategies in Hawaii
NBI (February 2004)

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(December 2003, 2004)

*Collecting Family Law Obligations:
Enforcement Strategies & Avoiding Malpractice*
HSBA Collection and Family Law Sections (September 2003)

Debt Collection from Start to Finish in Hawai'i
NBI (February 2003)

Commercial and Residential Evictions
Sterling (February 2003)

Hawai'i District Court Landlord-Tenant Manual
Contributor
HSBA (July 2001, December 2007)

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Lorman (April 2001)

Hawai'i Foreclosure and Related Bankruptcy and Title Issues
NBI (February 2001, March 2002)

Fair Debt Collection Practices Act and Fair Credit Reporting Act
Lorman (February 2001)

Consumer Credit Workshops
Volunteer Legal Services Hawai'i (2001 – 2004)

Collection of Accounts Receivable in Hawai'i
Lorman (October 2000, April 2003)

Hawai'i State Conference on Collection Law
Professional Education Systems, Inc. (March 2000)

Hawai'i Commercial Lease Litigation
Lorman (November 1999, 2000, June 2002)

Bankruptcy: Strategies for Prevention and Planning
HCUL (June 1999)

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DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Bankruptcy Law for Non-Bankruptcy Attorneys
HSBA-CLE (April 1999)

Consumer Bankruptcy from the Creditor's Perspective: Options and Pitfalls
HCUL (February 1999)

Advanced Consumer Bankruptcy Issues in Hawai'i
NBI (July 1998, November 2000, March 2003)

Credit and Bankruptcy
Hawai'i State Judiciary "Lunch 'n Learn the Law" Program (April 1998)

Collection Law for the Health Care Industry
Lorman (April 1998, 1999, 2000, 2001)

Complying with the Fair Debt Collection Practices Act in Hawai'i
NBI (January 1998, October 1999, May 2001)

Bankruptcy Law for the General Practitioner
Hawai'i Institute for Continuing Legal Education (HICLE)
HSBA Bankruptcy Law Section (December 1997)

Hawai'i Collections Law Seminar (Editor-in-Chief and author), **HICLE** (November 1997), **HSBA** (May 2002, 2006)

Pro Se Bankruptcy Clinics
Hawai'i Lawyers Care (August 1997)
Volunteer Legal Services Hawai'i (March 2002, August 2012)

Bankruptcy Update
Lorman (August 1997, July 1998)

How to Collect a Judgment in Hawaii: A Primer
Lorman (April 1997, 1998, 1999, 2000, 2001, 2003, March 2008)

Real Estate Seminar for Paralegals and Legal Assistants
Institute for Continuing Education (January 1997)

The Impact of Bankruptcy on Dissolution of Marriage
NBI (December 1996, June 1998)

Fundamentals of Bankruptcy Law and Procedure in Hawai'i
NBI (October 1996, 1997; July 1999; November 2001)

What You Need to Know About the Fair Debt Collection Practices Act
Lorman (October 1996)

The Fundamental Principles of Chapter 7 Practice and Procedure
HSBA Bankruptcy Law Section (September 1996)

Pro Se Divorce Clinics
Hawai'i Lawyers Care (July 1996)
Volunteer Legal Services Hawai'i (March 2000, 2002)

Annual Divorce Law Update: Collection and Enforcement Issues
HICLE/ HSBA Family Law Section (December 1995)

Personal Property: Repossession and Related Remedies
NBI (November 1995)

CURRICULUM VITAE
DAVID C. FARMER, ESQ.

**SEMINARS
AND MANUALS:**

Asset Preservation Techniques in Hawai'i
NBI (September 1995, November 1996)

Recent Developments in Bankruptcy and Commercial Law in Hawai'i
NBI (August 1995)

Successful Judgment Collections in Hawai'i
NBI (May 1995, January 1997, August 2000, January 2002)

Hawai'i Foreclosure and Repossession
NBI (February 1995, November 2003)

Collection Law in Hawai'i
Lorman (January 1994-1995, 1996, 1998-2005)

Advanced Creditor Representation in Hawai'i
NBI (October 1994)

Nuts and Bolts of Bankruptcy Law
HICLE/HSBA Bankruptcy Law Section (July 1994)

Advanced Collections and the Bankruptcy Process in Hawai'i
NBI (April 1994)

How to Get Results in Collection of Delinquent Debts in Hawai'i
NBI (July 1993, June 1997)

Collecting Judgments: Beyond the Basics
NBI (January 1993)

The Court of Last Resort: Chapter 11 Business Reorganization in Bankruptcy
HSBA Bankruptcy Law Section Annual Seminar (May 1993)

Foreclosure and Repossession in Hawai'i
Lorman (July 1992, 1993; November 1994, 1995; June 1997, 1998; May 2008)

Collecting Judgments in Hawai'i
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**REPORTED
DECISIONS:**

Ellis v. P.F. Three Partners et al. (In re Upland Partners)
212 Fed. Appx. 597, 2006 U.S. App. LEXIS 30350 (9th Cir. 2006) (unpublished)

Giacometti v. Arton Bermuda Limited, et al. (In re: Sukamto Sia)
349 B.R. 640, 2006 Bankr. LEXIS 2183 (Bankr. D. Haw. 2006)

GECC Fin'l. Corp. v. Jaffarian
79 Haw. 516, 904 P.2d 530 (Haw. App. 1995),
aff'd in part, rev'd in part, 80 Haw. 624, 905 P.2d 624 (Haw. 1995)

Doe v. Roe
9 Haw. App. 623, 859 P.2d 922 (1993)

Bank of Hawaii v. Wood (In re Wood)
123 B.R. 881 (Bankr. D. Haw. 1991), *aff'd* 972 F.2d 1348 (9th Cir. 1992)

In re Parade Realty, Inc., Employees Retirement Pension Trust
134 B.R. 7 (Bankr. D.Haw. 1991)

CURRICULUM VITAE
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REPORTED
DECISIONS:

In re Shih
125 B.R. 812, (Bankr. D.Haw. 1991)

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LATE

HB375

Submitted on: 1/20/2016

Testimony for JUD on Jan 21, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

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HB375

Submitted on: 1/21/2016

Testimony for JUD on Jan 21, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
fernando Salas	Individual	Support	No

Comments: I urge you to pass this bill. Especially in this times more people becoming poor At the same time with the failure of the economy and the high amount of unemployment.

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HB375

Submitted on: 1/21/2016

Testimony for JUD on Jan 21, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Wille	Individual	Support	No

Comments: As an attorney of 30+ years I urge passage of this bill to amend the threshold amount for exemption of real property. The current law is completely unrealistic.

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