



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

**LATE**

**ON THE FOLLOWING MEASURE:**  
H.B. NO. 193, RELATING TO PROPERTY.

**BEFORE THE:**  
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Wednesday, February 15, 2017 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 329

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

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Chair McKelvey and Members of the Committee:

The Department of the Attorney General (“the Department”) offers comments and concerns on this bill and writes to advise the committee that the proposed amendments to the statute will likely make it more difficult to collect moneys owed to the state. This bill would effectively prohibit creditors, including state agencies, from using judgment liens to collect moneys owed to creditors.

Section 2 of the bill, page 2, lines 15-21, amends section 651-92(a), Hawaii Revised Statutes (HRS). The amendment, among other things, changes the property exemption from \$30,000 to \$275,000. The amendment enables debtors to shelter money from creditors, including state agencies, in the form of equity in a property, up to \$275,000. This would include a home of any value. Because the amendments do not affect judgment creditors who execute before July 1, 2017, a large number of foreclosure actions may take place prior to July 1, 2017, as judgment liens are usually enforced upon the sale of property.

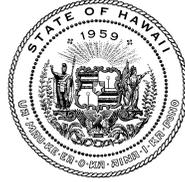
Section 3 of the bill, page 5, lines 5-7 and lines 8-9, amends section 651-121(1) and (2), HRS. The amendment to section 651-121(1) exempts from attachment and execution of certain personal property, up to fair market value plus an upward adjustment for the consumer price index. This amendment would allow debtors to shelter money from creditors by purchasing 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. The amendment to section 651-121(2), HRS, exempts from attachment and execution of the fair market value of a car up to \$15,000 above any liens or encumbrances. Section 651-121(2) previously limited the motor vehicle exemption to \$2,575. The amendment enables debtors to shelter up to \$15,000 from creditors, in the form of equity in a car.

Thank you for the opportunity to testify.

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

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Angus L. K. McKelvey, Chair  
and Members of the Senate Committee on Consumer Protection and Commerce

Date: Wednesday, February 15, 2017  
Time: 2:00 P.M.  
Place: Conference Room 329, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 193, Relating to Property

The Department of Taxation (Department) appreciates the intent of H.B. 193 and provides the following comments for your consideration.

H.B. 193 makes changes to the exemption of real property from attachment and execution under section 651-92, Hawaii Revised Statutes (HRS). Among other things, the amendments indicate that the exemption from attachment will not apply if a debtor is delinquent in payment of income taxes, real property taxes, or a mortgage. The measure is effective July 1, 2017.

The exclusion from the exemption to attachment in this measure needs to be clarified. As written, real property would be open to attachment by any creditor if the taxpayer is delinquent in payment of income tax by any amount, or if the taxpayer is delinquent for any period of time. The exclusion also applies only to debt from income tax and real property tax, but not to debt arising from, for example, the general excise tax. This outcome seems inconsistent with the stated purposes of the measure. The Department suggests clarifying this to avoid any unintended consequences.

Conversely, if the intent is to disallow the exemption entirely if a taxpayer is behind in income tax payments, the Department notes that taxpayer information, including whether or not a taxpayer is delinquent, is confidential. The Department cannot reveal confidential tax information to third parties without a statutory exemption allowing it to do so.

Thank you for the opportunity to provide comments.



**ADA**

**HAWAII**

**AMERICANS FOR DEMOCRATIC ACTION**

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Cameron Sato

**MAILING ADDRESS**

George Simson  
Emmanuel Zibakalam  
P.O. Box 23404  
Honolulu, Hawai'i 96823  
[www.adaaction.org](http://www.adaaction.org)

February 14 , 2017

TO: Honorable Chair McKelvey and Members of the Consumer Protection & Commerce Committee

RE: HB 193 Relating to Property  
Support for hearing on Feb. 15

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 193 as it would update the safety net of assets for working families who are struggling under heavy debt. It would increase the amount of the exemption from attachment or execution of real property that is owned by any individual who is not delinquent on income taxes, real property taxes, or mortgages; and a motor vehicle. The 2013 National Consumer Law Center Studies have rated Hawaii with a "D" for failing to protect working families from poverty. Protect those in need in our society.

Thank you for your consideration.

Sincerely,

John Bickel  
President

Presentation To  
House Committee on Consumer Protection and Commerce  
February 15, 2017 at 2:00 PM  
State Capitol Conference Room 329

**Testimony in Opposition to House Bill 193**

TO: The Honorable Angus L. K. McKelvey, Chair  
The Honorable Linda Ichiyama, 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 opposes House Bill 193, similar to our opposition to HB 375 which was considered in the 2015 and 2016 legislative sessions. This measure prohibits creditors from using judgement liens to collect moneys owed by borrowers. It will further hamper the ability of creditors to recover payments from borrowers in default of their loan obligations. As a result, lenders may have to be more stringent in their credit underwriting criteria, especially for unsecured and other open-ended loans, thus reducing availability of these popular and convenient credit products for the very consumers this measure is attempting to protect.

There are other flaws in this measure and we incorporate by reference the various concerns raised in the testimonies of the Hawaii Financial Services Association and the Collection Law Section of the Hawaii State Bar Association.

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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 13, 2017 9:34 PM  
**To:** CPCtestimony  
**Cc:** lila.mower@gmail.com  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/13/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lila Mower	Hui `Oia`i`o	Support	No

Comments: Hui `Oia`i`o seeks to protect ownership rights. If by expanding HRS651-92 with HB193, more owners can keep their homes, then this bill is worthy of our support.

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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2017 8:31 AM  
**To:** CPCtestimony  
**Cc:** Burdick808@gmail.com  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/14/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan B Burdick	Progressive Democrats of Hawaii	Support	No

Comments: Progressive Democrats of Hawaii strongly supports HB 193, which would increase the dollar amounts of various exemptions from attachment and execution. These are provisions of law that all too often go unamended for too long, leaving judgment debtors unable to get back on their feet. Economic justice requires updating these provisions of law. Thank you for the opportunity to testify on this matter.

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

45-3438 Mamane Street, Building 2  
P.O. Box 9  
Honoka`a, HI 96727  
(808) 775-0530  
(808) 775-1040 Facsimile  
[barbara@island-law.com](mailto:barbara@island-law.com)  
[www.island-law.com](http://www.island-law.com)

**LATE**

February 13, 2017

TESTIMONY  
HB 193  
February 15, 2017  
2:00 p.m.

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Rep. Angus L.K. McKelvey, Chair  
Rep. Linda Ichiyama, Vice Chair  
and members of the Committee

I am testifying in support of HB 193

I am a bankruptcy lawyer and have seen the effect of the economy on individual lives during the past almost 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, and lien 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 38 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.

**Committee on Consumer Protection and Commerce**

**HB 193**

**February 13, 2017**

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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.

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 elder hood without being a burden on government benefits. Not every person can be in the top 10% of earnings. Who grows the food and brings you dinner when you dine out; who makes that dinner; who washes those dishes? At \$8.50 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 worth much less, 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 domesday 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.

**Committee on Consumer Protection and Commerce**

**HB 193**

**February 13, 2017**

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Homestead exemptions are not the sole source of asset protection. For our most vulnerable populations, asset protection is an elusive goal. 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.

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.

**Committee on Consumer Protection and Commerce**

**HB 193**

**February 13, 2017**

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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



**LATE**

## Collection Law Section

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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](mailto:sguttman@kdubm.com)

February 14, 2017

Representative Angus L.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice-Chair  
House Consumer Protection & Commerce Committee

**Re: HB 193, HD 1 Relating to Property**  
**Hearing: Wednesday, February 15, 2017, 2:00 p.m.**

Dear Chair McKelvey, Vice-Chair Ichiyama and Members of the Committee:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii State Bar Association ("CLS")<sup>1</sup>.

The CLS has submitted testimony regarding previously proposed legislation to revise certain provisions of Chapter 651 of the Hawaii Revised Statutes as they relate to exempting certain property from execution and attachment. The CLS has serious concerns as to the proposed changes set forth in HB 193, HD 1 ("HB 193").

With respect to the proposed amendment to the personal property provision of Section 651-121(a), the change from \$1,000 to "the fair market value of such items as adjusted by the most recent consumer price index" is problematic. In addition to the obvious issue of which specific "consumer price index" will be used, providing for an open-ended exemption will create a situation ripe for abuse by sophisticated consumers. The CLS agrees that the \$1,000 limitation needs to be revised, however, any revised language needs to include a reasonable dollar limit. Absent a specific dollar limit, a sophisticated debtor could convert his personal property assets to, for example, a Rolex watch while a less sophisticated debtor would probably leave his/her money in a bank account where it is open to garnishment.

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<sup>1</sup> The comments and recommendations submitted reflect the position and viewpoint of the Collection Law Section of the Hawaii State Bar Association ("HSBA"). The position and viewpoint has not been reviewed or approved by the HSBA Board of Directors and is not necessarily the same as the position held by the HSBA.

The proposed legislation increases the automobile exemption from \$2,575 to \$15,000. The \$2,575 exemption figure was established by the Legislature in 1999. It is the CLS' position that the automobile exemption amount should not be increased to accommodate luxury vehicles. The Bankruptcy Code, which periodically adjusts the automobile exemption for inflation, is currently at \$3,775. If the goal of HB 193 is to assist the average working individual rather than reward the spendthrift, any increase in the exemption amount should be consistent with what has been the traditional standards set by prior legislation.

The CLS concurs with the intent of HB 193 to raise the real property exemption limit, which was set in 1978. However, for the reasons enumerated below, we oppose the proposed amendments to Section 651-92, as currently stated.

1. In its present form, HB 193 increases the real property exemption to \$275,000 but fails to retain the requirement that the property must be the debtor's residence; failure to retain the homestead character of this exemption provides a loophole for a debtor to exempt investment property, which is inconsistent with the intention of the statute.
2. As noted in the above discussion relating to personal property, setting a high exemption amount opens the door for abuse by sophisticated debtors.
3. The intended goal of the homestead exemption is to ensure that a debtor has sufficient funds to acquire replacement housing, not to create an economic windfall at the expense of his/her creditors. For example, under HB 193 as currently proposed, most debtors with real property would be rendered judgment proof against a tort judgment creditor whose damages arose from an intentional tort such as a drunk driving incident, an assault or fraud.

Section 651-92 ( c), as proposed, makes the debtor "who is delinquent in payment of income taxes, real property taxes, or a mortgage" unable to qualify for any exemption. This is the type of legislation that has the potential to increase our State's homeless population. The idea behind the homestead allowance is to allow an individual the resources to obtain substitute housing. Absent such an exemption, the individual's

Re: HB 193, HD 1  
Page Three

ability to obtain substitute housing is significantly handicapped. It is the person who is having problems paying his or her mortgage or tax obligations that is most in need of the homestead allowance. It should also be noted that any sale involving Chapter 651 will result in the payment of real property taxes.

The CLS is also concerned that the proposed legislation provides for an effective date of July 1, 2017. Debtors currently in discussion with a creditor to resolve a debt may find the creditor terminating the discussion and immediately proceeding with an execution sale. A constitutional issue may exist with respect to terminating the right of an existing creditor to proceed with an execution sale. As such, the provision should be revised to exclude any creditor currently holding an existing lien from the proposed increase in exemption limits.

Current law exempts child support from attachment or execution. It is the CLS' position that no public purpose is served by limiting the child support exemption to a one month period.

The CLS would like to participate in a dialogue to establish exemption amounts that are consistent with the underlying goals of the original legislation. We are concerned that the proposed legislation may benefit dishonest debtors, such as those who have defrauded consumers through Ponzi schemes, while honest creditors are handicapped in recovering funds to which they have a legal right.

Thank you for considering these comments.

Sincerely,



STEVEN GUTTMAN,  
President  
Collection Law Section

cc: Patricia A. Mau-Shimizu, HSBA



**LATE**

TIM VANDEVEER  
Chair

MARGARET WILLE  
SEAN SMITH  
Legislation Committee Co-Chairs

February 15, 2017

**IN SUPPORT OF HB193 “Relating to Property”**

Representative Angus McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
February 15, 2017 2:00 p.m. State Capitol Conference Room 329

**Submitted On Behalf of the Democratic Party of Hawai‘i**

The Democratic Party of Hawai‘i supports HB193 “Relating to Property” which updates the statutory exemptions from attachment or execution of real or personal property. HB193 is important in the effort to protect families from sliding into poverty, the consequences of which are extremely costly to the State and taxpayers. **Passage of this legislation is one of the Democratic Party of Hawai‘i’s legislative priorities for the 2017 legislative session.** Please pass this bill out of committee.

Mahalo for the opportunity to testify on this bill.

Respectfully submitted,

Tim Vandever  
Chair of the Democratic Party of Hawai‘i

/s/ Margaret Wille  
/s/ Sean Smith  
Legislative Committee Co-chairs



1654 South King Street  
Honolulu, Hawaii 96826-2097  
Telephone: (808) 941.0556  
Fax: (808) 945.0019  
Web site: [www.hcul.org](http://www.hcul.org)  
Email: [info@hcul.org](mailto:info@hcul.org)

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Good

**LATE**

Testimony to the House Committee on Consumer Protection & Commerce  
February 15, 2017

Testimony in Opposition to HB 193, Relating to Property

To: The Honorable Angus McKelvey Chair  
The Honorable Linda Ichiyama, 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 61 Hawaii credit unions, representing over 800,000 credit union members across the state. We are opposed to HB 193.

Almost all of Hawaii's credit unions currently offer mortgages or 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 193, 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.

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

**LATE**

February 15, 2017

Rep. Angus L.K. McKelvey, Chair

Rep. Linda Ichiyama, Vice Chair

and members of the House Committee on Consumer Protection & Commerce

Hawaii State Capitol

Honolulu, Hawaii 96813

Re: **H.B. 193 (Property)**

**Hearing Date/Time: Wednesday, February 15, 2017, 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.

This Bill: (a) increases the amount of the exemption from attachment or execution of (1) real property that is owned by any individual who is not delinquent on income taxes, real property taxes, or mortgages; and (2) a motor vehicle; and (b) exempts one month of child support and spousal support from attachment or execution.

During the 2015 and 2016 Legislative Sessions, a bill with similar purposes was heard in the House. The HFSA submitted testimonies opposing that bill which did not pass the Legislature.

The HFSA similarly opposes H.B. 193. This Bill, as drafted, does not seem to be sound public policy. We believe that some of the proposed changes in this Bill will enable and encourage certain debtors, who have properties with a lot of equity, to avoid paying their contractual obligations and to shelter their assets from creditors.

We object to a provision under this Bill which would allow a debtor to shelter from creditors up to \$275,000 in equity in a real property regardless of whether the property is owner-occupied or owned as an investment, and regardless whether the property is a residential or commercial. Currently the exemption amounts are either \$20,000 or \$30,000.

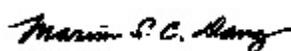
Another objectionable provision in this Bill would encourage a debtor to shift assets from cash to expensive jewelry and watches because those items would be exempt up to their “fair market value”. Currently the exemption amount is an aggregate value not exceeding \$1,000.

An unintended consequence of this Bill is that consumers and other borrowers could be negatively impacted. That’s because if this Bill passes, lenders and other creditors might need to tighten their underwriting standards for unsecured loans or other unsecured credit to ensure that the lenders and creditors get paid the monies that are owed.

We join in the testimony submitted by the Collection Law Section of the Hawaii State Bar Association which opposes this Bill.

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



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

**LATE**

February 14, 2017

The Honorable Angus L. K. McKelvey, Chair,  
The Honorable Linda Ichiyama, Vice Chair, and  
Members of the House Committee on Consumer Protection and Commerce

Hearing Date: February 15, 2017  
Hearing Time: 2:00pm  
Hearing Place: State Capitol, Room 329

Re: House Bill 193, Relating to Property

**Chair McKelvey, Vice Chair Ichiyama and Members of the Committee:**

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 193 and concurs with the testimony presented by the Collection Law Section of the Hawaii State Bar Association. House Bill 193 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**



BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
HOUSE BILL NO. HB 193

FEBRUARY 15, 2017  
2:00 PM  
STATE CAPITOL ROOM 329

Aloha Chair McKelvey and Vice Chair Ichiyama,

Thank you for the opportunity to testify on HB 193. YPDA and its 900+ members who reside in Hawaii strongly support this bill. This measure is critical in the fight for economic justice for the citizens of Hawaii. The current law on asset protection for real property is outdated and has not been updated since 1978. As we all know, the cost of living and the cost of houses and condos have skyrocketed since 1978. To have statutes that refer to money amounts such as the median price for a house or condo that were only relevant 30+ years ago is putting our citizens at a

disadvantage. This measure reasonably updates these statutes and provides the citizens of Hawaii the update on the statutes that it needs. Mahalo!

-The Young Progressives Demanding Action

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 13, 2017 4:49 PM  
**To:** CPCtestimony  
**Cc:** steven\_jacquier@hotmail.com  
**Subject:** \*Submitted testimony for HB193 on Feb 15, 2017 14:00PM\*

**HB193**

Submitted on: 2/13/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steven Jacquier	Individual	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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 13, 2017 10:29 PM  
**To:** CPCtestimony  
**Cc:** lourdes10@me.com  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/13/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lourdes Scheibert	Individual	Support	No

Comments: I support, HB193 which creates a safety net of assets that cannot be touched by creditors. The National Consumer Law Center Studies of States rated Hawaii with a "D" in failing to protect households from poverty because we haven't updated our asset protection since the 70's.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 13, 2017 9:47 PM  
**To:** CPCtestimony  
**Cc:** sunnymakaha@yahoo.com  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/13/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale A. Head	Individual	Support	No

Comments: I support this bill as it creates a 'safety net' to partially shield assets from seizure by creditors.

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**Sent:** Monday, February 13, 2017 5:03 PM  
**To:** CPCtestimony  
**Cc:** JAMESLOGUE412@GMAIL.COM  
**Subject:** \*Submitted testimony for HB193 on Feb 15, 2017 14:00PM\*

**HB193**

Submitted on: 2/13/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Logue	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2017 10:27 AM  
**To:** CPCtestimony  
**Cc:** hawaiijim@yahoo.com  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/14/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William	Individual	Support	No

Comments: Good idea, pass.

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**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2017 12:13 PM  
**To:** CPCtestimony  
**Cc:** cushmanzoo@hawaiiantel.net  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/14/2017  
Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sharron Cushman	Individual	Support	No

Comments: I support HB193 which creates a safety net of assets that cannot be touched by creditors.

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Testimony on HB193 for the House Committee on Consumer Protection and Commerce

**LATE**

Aloha e Chair McKelvey and members of the Committee on Consumer Protection and Commerce,

Thank you for this opportunity to testify in strong favor of HB193. A resident of Hawaii for the past 47 years, currently a retired journalist and school teacher living in Puna, one of the poorest communities in the state, I urge you to help those in the burgeoning lower economic strata be granted the kinds of asset protections as those protecting the assets of the upper economic echelons and corporations, who have had paid lobbyists to push legal limitations on seizure of their assets.

I had no idea that Hawaii laws let creditors take essential assets that were never documented or given as collateral for a loan. Too many loan companies, creditors and collection agencies here prey on the vulnerable: the uneducated poor, the elderly and disabled, the young and inexperienced. The state needs to curtail such financial companies' abilities to legally threaten to go after a debtor's and the debtor's family's various assets that were not included in a loan.

As a young woman in the 1960s, banks and businesses would not even count my full-time income when my husband and I applied for credit, even a \$200 Sears card. Working-class wives were financially ineligible as they were expected to get pregnant and quit their jobs.

Times have really changed. For the past decade or more, my 51-year-old mentally disabled daughter has been inundated with credit companies' offers despite the fact that she is unable to pay her bills and local businesses will no longer take her checks or credit cards. But still they come. And they will send people to testify here today how "these people" cheat and hide assets to take advantage of "the system."

Survival for the working poor families where I live is often if not usually just one unexpected "emergency" from disasters that may mean loss of a job or jobs, homelessness, separation of families: that slippery slope into generational poverty.

Please pass HB193 to give these Hawaii citizens protections of the little they are able to accumulate that was not on the table as collateral when they signed up for credit. Banks and financial loan institutions need to tighten up their own rules instead of marking the easy targets. And the poor and other vulnerable people need similar consumer protections as those with greater financial resources, including costly legal services.

Thank you for your consideration of this plea. Malama pono.

Frances K. (Frankie) Stapleton  
14-803 Crystal Circle  
Pahoa, HI 96778  
PH: 808.965.8945

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2017 1:55 PM  
**To:** CPCtestimony  
**Cc:** annsfreed@gmail.com  
**Subject:** Submitted testimony for HB193 on Feb 15, 2017 14:00PM

**HB193**

Submitted on: 2/14/2017

Testimony for CPC on Feb 15, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Individual	Support	No

Comments: Aloha Chair McKelvey and members, I support HB193 "Relating to Property" which updates the statutory exemptions from attachment or execution of real or personal property. HB193 is important in the effort to protect families from sliding into poverty. Please pass this bill out of committee. Ann S. Freed, Member State Central Committee

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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**LATE**

February 15, 2017

**IN SUPPORT OF HB193 “Relating to Property”**

Representative Angus McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
February 15, 2017 2:00 p.m. State Capitol Conference Room 329

I support HB193 “Relating to Property” which updates the statutory exemptions from attachment or execution of real or personal property. HB193 is important in the effort to protect families from sliding into poverty.

Recent studies show that one emergency costing around \$400 would have a severe impact on the personal finances of more than 50% of the US population. In Hawaii, with our high cost of living it would stand to reason that a great number would live here. So many people whose families have lived here for generations want to stay and raise their own family with the same upbringing and values; they do so even if living paycheck to paycheck is the only way they can accomplish that.

If someone is up to date on all other property payments, I agree that they should be given a chance, and not have their finances set on a crash course for disaster.

Thank you for allowing me the opportunity to testify on this important matter. Please pass HB193.

Erynn Fernandez  
1551 Aulena Pl. Honolulu, Hawaii 96821

**LATE**

SUPPORT HB193

Relating to Property; Exceptions

I support HB193. The working poor are (by definition) in a constant battle to support themselves and their families living paycheck to paycheck lives knowing full well that they are one pay check away from economic ruin. This bill addresses this problem modifying the current social safety net protections by providing additional safeguards regarding asset protection.

Furthermore, this bill protects personal assets and updates current statutes to reflect inflation and current fair market value standards. Debt collectors for the most part are only interested in getting the debtor to pay the debt owed in the most expedient manner possible. Yet in the process that debtor might find themselves in catastrophic situation where the debt collector can take so much that the debtor is unable to financially recover and maybe reliant on social programs in some cases indefinitely.

The Debtor is not impacted by the situation after the fact of the collection procedure. Yet the state and all taxpayers are. We must not create a situation where the debtor is in far worst a situation than before and allow the debtor to pay their debts yet not "be on the streets", since they would not able to support themselves or their family and pay owned debt.

This bill allows for bill collectors to still collect on debt but not to put a family or individual(s) in such constraints that they add to the growing homeless population of Hawai'i. Families and individuals need to keep a minimal level of assets free from creditors reach. According the to the National Consumer Law Center's 2013 study regarding families pushed into poverty, Hawai'i was given the dismal grade of "D". Hawai'i should not be proud nor complacent with as receiving a "D" for helping Hawai'i's Families. Worker wage protection and protecting workers from poverty in a state with some of highest cost of living in the nation well benefit the state and taxpayers. In closing, workers should be not so overcome with debt that they go from being the working poor to the working homeless.

Kendrick Farm

**LATE**

**HB 193**

**L A T E**

**Hearing Date:** Feb. 15,. 2017, 8:40 am  
**Name:** Karen K. Cobeen  
**From House District:** House, 7<sup>th</sup> District  
**Position:** Support  
**Committee:** Consumer Protection & Commerce  
**Chair:** Rep. Angus McKelvey  
**Vice Chair:** Rep. Linda Ichiyama

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Date: Feb. 14, 2017

Aloha Chairman McKelvy, Vice-Chair Ichiyama and members of this committee:

My name is Karen Cobeen and I live on Hawaii Island with my husband and adult disabled son.

I support HB193 "Relating to Property" which updates the statutory exemptions from attachment or execution of real or personal property. HB193 is important in the effort to protect families from sliding into poverty.

Please pass this bill out of committee.

Respectfully submitted,

Karen K. Cobeen

**LATE**

February 15, 2017

**IN SUPPORT OF SB193 “Relating to Property”**

Representative Angus McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
February 15, 2017 2:00 p.m. State Capitol Conference Room 329

I support SB193 “Relating to Property” which updates the statutory exemptions from attachment or execution of real or personal property. Such exemptions have not been updated in Hawai`i for over 30 years. That fact alone makes consideration of this bill important to citizens in our state. SB193 is important in the effort to protect families from sliding into poverty, a critical issue in Hawai`i these days especially given our high cost of living. Please pass this bill out of committee.

M. Dolly Strazar  
Hilo, Hawai`i

Louis Doody  
Hilo, Hawai`i