

A Bill for an Act Relating to Attorneys' Liens.

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

SECTION 1. The legislature finds that the alternative minimum tax was passed by Congress to ensure that individuals who have legitimate federal tax liabilities pay their fair share of federal taxes.

Some federal circuit courts of appeals have interpreted the alternative minimum tax to require that a person who receives a nonpersonal injury settlement (such as for nonphysical injury) must pay federal taxes on the full amount of an award or settlement, without receiving a deduction for the attorney's fees part of the award. Because attorneys also pay taxes on their portion of a court-awarded or contingency fee award, this results in double taxation on the award.

The Ninth Circuit Court of Appeals has ruled that if the court-ordered or contingent attorney's fees are considered to be property of the attorney, then such fees would not be subject to double taxation and therefore only the attorney—not the client—would have to pay income tax on the fees. The client still pays taxes on the amount the client receives after deducting the amount of attorney's fees. (See *Banaitis v. Commissioner of Internal Revenue*, 340 F.3d 1074 (9th Cir. 2003), ruling that under Oregon law, court-ordered or contingent attorney fees are considered property of the attorney and not subject to double taxation.)

The purpose of this Act is to enact an attorneys' lien statute modeled after the provisions in the Oregon statute relied upon by the *Banaitis* decision, to ensure that Hawaii residents who receive nonphysical injury settlements or awards are not subject to double federal taxation.

SECTION 2. Chapter 507, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§507- Attorney's lien upon actions and judgments. (a) An attorney has a lien upon:

- (1) Actions, suits, and proceedings after commencement of the action;
- (2) Judgments, decrees, orders, settlements, and awards entered by the court in favor of the client; and
- (3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.

(b) The lien shall be for:

- (1) The fees and compensation specifically agreed upon with the client;
- (2) The reasonable value of the services of the attorney, if there is no fee agreement;
- (3) Any costs advanced by the attorney; and
- (4) Any fees or commissions taxed or allowed by the court.

(c) Except for tax liens, prior liens of record on the real and personal property subject to the lien created by this section, and as provided in section (d), the attorney's lien is superior to all other liens.

(d) When the attorney's lien attaches to a judgment, settlement, or decree allowing or enforcing a client's lien, the attorney's lien has the same priority as the client's lien with regard to personal or real property subject to the client's lien.

(e) The attorney's lien on a judgment, decree, order, settlement, or award remains valid as long as the judgment, decree, order, settlement, or award remains valid.

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(f) To be enforceable under this section, a notice of claim of the attorney's lien shall be filed:

- (1) Before the complaint is dismissed by stipulation;
- (2) Before the complaint is dismissed by order of the court; or
- (3) Not later than one year after entry of final judgment is filed and disposition of any appeal thereof.

(g) Except as provided by subsections (i) and (j), the attorney's lien is not affected by a settlement between the parties to the action, suit, or proceeding before or after the judgment, decree, order, or award.

(h) Except as provided by subsections (i) and (j), a party to the action, suit, or proceeding or any other person shall not have the right to discharge or dismiss any judgment, decree, settlement, or award entered in the action, suit, or proceeding until the lien and claim of the attorney for fees based thereon is satisfied in full.

(i) A judgment debtor may pay the full amount of a judgment or decree into court, and the clerk of the court shall thereupon fully satisfy the judgment or decree on the record, and the judgment debtor shall be thereby released from any further claims thereunder.

(j) If more than one attorney from the same firm appears of record for a party, the satisfaction of the lien created by this section by one of the attorneys is conclusive evidence that the lien is fully satisfied.

(k) Attorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them."

SECTION 3. Section 605-8, Hawaii Revised Statutes, is amended to read as follows:

"§605-8 Practice in all courts; fees. The practitioners shall have the right to practice in all the courts of the State, and to appear therein as attorneys in behalf of persons who may choose to retain them, for the prosecution or defense of actions.

Attorney's fees or commissions taxed or allowed by the court shall be collected for the benefit of the attorney[.] as provided by section 507- ."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 4, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.