

JAN 18 2013

A BILL FOR AN ACT

RELATING TO ATTACHMENT.

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

1 SECTION 1. The legislature finds that current law on
2 exemption from real property attachment and from certain
3 personal property attachment needs to be updated to ease the
4 financial burden on Hawaii families who struggle to earn a
5 living while simultaneously living under heavy debt obligations.
6 Some of these individuals collect unemployment and must hope for
7 a job before the unemployment benefits run out, meanwhile they
8 risk losing their assets for lack of income to pay their debts.

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

11 "**§651-92 Real property exempt.** (a) [~~Real property shall~~
12 ~~be exempt from attachment or execution as follows:~~

13 ~~(1)]~~ An interest in one parcel of real property in the
14 State of Hawaii of a fair market value not exceeding
15 ~~[\$30,000]~~ the most recent real property tax assessment
16 of the property, that is owned by the defendant [who
17 ~~is either the head of a family or an individual sixty-~~
18 ~~five years of age or older.]~~, including properties



1 under the department of Hawaiian home lands, shall be
2 exempt from attachment or execution.

3 ~~[(2) An interest in one parcel of real property in the~~
4 ~~State of Hawaii of a fair market value not exceeding~~
5 ~~\$20,000 owned by the defendant who is a person.]~~

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

14 Any claim of exemption under this section made before
15 May 27, 1976, shall be deemed to be amended on May 27, 1976, by
16 increasing the exemption to the amount permitted by this section
17 on May 27, 1976, and again on May 27, 2013, to the extent that
18 such increase does not impair or defeat the right of any
19 creditor who has executed upon the real property prior to
20 May 27, 1976.

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



- 1 (1) A lien as provided by section 507-42;
- 2 (2) A lien or security interest created by a mortgage,
3 security agreement, or other security instrument;
- 4 (3) A tax lien in the name of the federal or state
5 government;
- 6 (4) An improvement district lien of any county of the
7 State; or
- 8 (5) A lien or encumbrance recorded against the real
9 property prior to the acquisition of interest in and
10 commencement of residence on such real property.

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

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

16 "**§651-121 Certain personal property and insurance thereon,**
17 **exempt.** The following described personal property of an
18 individual up to the value set forth shall be exempt from
19 attachment and execution as follows:

- 20 (1) All necessary household furnishings and appliances,
21 books and wearing apparel, ordinarily and reasonably
22 necessary to, and personally used by a debtor or the



1 debtor's family residing with the debtor; and, in
2 addition thereto, jewelry, watches, and items of
3 personal adornment up to an aggregate cash value not
4 exceeding [~~\$1,000.~~] the fair market value of such
5 items as adjusted by the most recent consumer price
6 index.

7 (2) One motor vehicle up to [a] the fair market value of
8 [~~\$2,575,~~] the vehicle as adjusted by the most recent
9 consumer price index, over and above all liens and
10 encumbrances on the motor vehicle; provided that the
11 value of the motor vehicle shall be measured by
12 established wholesale used car prices customarily
13 found in guides used by Hawaii motor vehicle dealers;
14 or, if not listed in such guides, fair wholesale
15 market value, with necessary adjustment for condition.

16 (3) Any combination of the following: tools, implements,
17 instruments, uniforms, furnishings, books, equipment,
18 one commercial fishing boat and nets, one motor
19 vehicle, and other personal property ordinarily and
20 reasonably necessary to and personally owned and used
21 by the debtor in the exercise of the debtor's trade,



1 business, calling, or profession by which the debtor
2 earns the debtor's livelihood.

3 (4) One parcel of land, not exceeding two hundred fifty
4 square feet in size, niche or interment space owned,
5 used, or occupied by any person, or by any person
6 jointly with any other person or persons, in any
7 graveyard, cemetery, or other place for the sole
8 purpose of burying the dead, together with the railing
9 or fencing enclosing the same, and all gravestones,
10 tombstones, monuments, and other appropriate
11 improvements thereon erected.

12 (5) The proceeds of insurance on, and the proceeds of the
13 sale of, the property in this section mentioned, for
14 the period of six months from the date the proceeds
15 are received.

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

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



1 (8) Tax refunds that result from a federal earned income
2 tax credit.

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

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

7 SECTION 5. This Act shall take effect upon its approval;
8 provided that the amendments made to section 651-121(8) and (9),
9 Hawaii Revised Statutes, in section 3 of this Act shall apply to
10 taxable years beginning after December 31, 2012.

11

INTRODUCED BY: *Gene Kokeke*
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S.B. NO. 599

Report Title:

Exemptions; Liens; Attachments

Description:

Clarifies that real property which is owned by a head of a family or an individual who is sixty-five years of age or older shall be exempt from attachment and execution based on the most recent real property tax assessment instead of \$30,000.

Clarifies that real property which is owned by a person shall be exempt from attachment and execution based on the most recent real property tax assessment instead of \$20,000. Clarifies that attachment or execution does not apply to a debtor who is not delinquent in payment of income taxes, real property taxes, or mortgages. Clarifies that the fair market value of certain personal property exempted from attachment and execution is based on the fair market value as adjusted by the consumer price index, rather than \$1,000. Clarifies that the fair market of a motor vehicle exempted from attachment and execution is based on the fair market value of the vehicle as adjusted by the consumer price index, rather than \$2,575. Exempts child support moneys, tax refunds from the federal earned income tax credit from attachment and execution. Exempts tax refunds that result from federal or state child support tax credit from attachment and execution.

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