

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:
H.B. NO. 375, RELATING TO PROPERTY.

BEFORE THE:
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, February 4, 2015 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Steve A. Bumanglag, Deputy Attorney General

Chair McKelvey 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.

Section 2 of the bill, page 1, line 15, through page 2, line 14, amends section 651-92(a), Hawaii Revised Statutes. The amendment changes the property exemption from \$30,000 to the real property tax assessed value of the property.

The effect of the changes creates a debtor’s shelter from creditors. The amendments enable debtors to shelter money from creditors, including state agencies, in the form of equity in a property, up to its real property tax assessed value. This would include any home of any value including high value properties. 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 19-21, adds a new subsection, section 651-92(c). This new section 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. Debtors could 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 2 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.

The effect of the changes creates a debtor's shelter from creditors. 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 2 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 comingled 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.

There is a concern about the comingling of money in a bank account. There will 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 CFR § 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 that 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 CFR §§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 of Hawaii 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. Will the agency be required to make the determination of on what basis the tax refund was issued? Will the agency have to hold all tax refunds received until a determination is made that it is not from the types of refunds that are exempted? If it will be the agency's responsibility, implementation of this measure will be difficult and time consuming.

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

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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

Date: Wednesday, February 04, 2015
Time: 2:45 P.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 375, Relating to Property

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

H.B. 375 increases the threshold amount for real property to be exempt from attachment or execution to the most recent real property tax assessment, regardless of value and for all types of property owners. It 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. 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.

It should first be noted that federal tax liens are not affected by 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 the federal tax 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).

The proposed exemption for real property with the \$30,000 valuation cap removed is overly broad. In addition, the Department notes that there is no requirement that the property be

used as a residence for the debtor. If a person owns a single apartment building, the full value of that building up to its latest real property assessed value would be exempt, no matter how valuable it might be and no matter how much equity the debtor may have in it, and regardless of whether the debtor resides in the building.

The proposed subsection (c) of section 651-92 requires 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.

Subsection (c) is written with a double negative, and it is not clear exactly when it is intended to apply. It appears that the intent was to provide that execution or attachment is allowable if the debtor is delinquent in the payment of income taxes, real property taxes, or mortgages. The Department suggests clarification of this provision.

The Department also opposes the increase in exemption to the fair market value of jewelry, watches, and items of personal adornment. The exemption is made without regards to whether such item is even remotely necessary for the welfare of the debtor. 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 Department suggests clarification of 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.

Thank you for the opportunity to provide comments.

Presentation To
House Committee on Consumer Protection & Commerce
February 4, 2015 at 2:45pm
State Capitol Conference Room 325

Testimony in Opposition to House Bill 375

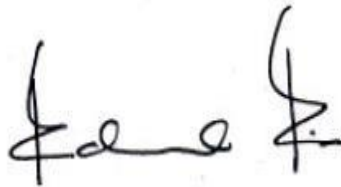
TO: The Honorable Angus L. K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
Members of the Committee

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 HB 375 because it will further hamper the ability of creditors to recover payments from borrowers in default of their loan obligations. This may cause lenders to be more stringent in their credit underwriting criteria, especially for unsecured and other open-ended credit products.

Currently, should a borrower default on their loan, the lender may pursue and record a judgment, which may become a lien on any real property the borrower may own. Under the existing statute, this lien would be junior to any mortgage related indebtedness, plus up to \$30,000 interest in the property. If the dollar limit is removed in favor of the fair market value of the property, it is likely to exempt virtually the entire property from attachment.

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



Edward Y. W. Pei
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HAWAII FINANCIAL SERVICES ASSOCIATION

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February 4, 2015

Representative Angus L.K. McKelvey, Chair
Representative Justin Woodson, Vice Chair
and members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **HB 375 (Property)**
Hearing Date/Time: Wednesday, February 4, 2015, 2:45 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.

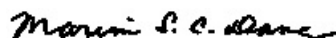
The purpose of this Bill is to amend the thresholds for the exemption of real property from attachment or execution to be based upon the most recent real property tax assessment, regardless of value and for all types of property owners. The Bill clarifies that attachment or execution does not apply to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

The HFSA believes that some of the changes in this Bill will enable certain debtors to avoid paying their contractual obligations. Additionally some of the provisions are vague and confusing.

We also incorporate by reference the various points raised in the testimonies of the Hawaii Credit Union League and the Collection Law Section of the Hawaii State Bar Association opposing this Bill.

This Bill does not seem to be sound public policy. 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



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
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Elizabeth A. Kane
William J. Plum
David B. Rosen
Andrew Salenger
Mark T. Shklov
Yuriko J. Sugimura
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Reply to: **STEVEN GUTTMAN, CHAIR**
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February 3, 2014

Rep. Angus L.K. McKelvey, Chair
Rep. Justin H. Woodson, Vice-Chair
House Committee on Consumer Protection and Commerce

Re: HB 375 Relating to Property
Hearing: Wednesday, Feb. 4, 2015, 2:45 p.m.

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

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

The CLS believes 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, the wording 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?

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.

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

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.*

February 3, 2015
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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

David C. Farmer
Board Member

cc: Steven Guttman
Patricia A. Mau-Shimizu

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 02, 2015 2:21 PM
To: CPCtestimony
Cc: barbara@island-law.com
Subject: Submitted testimony for HB375 on Feb 4, 2015 14:45PM

HB375

Submitted on: 2/2/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L Franklin	Barbara L Franklin, Esq., Attorney at Law	Support	No

Comments: Based on my analysis of the current exemptions, if they 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. This measure goes a long way toward righting that situation. As a bankruptcy attorney, having analyzed over 1000 Hawaii households' financial situations, this measure will provide a much needed safety net from creditor collection actions and clarify the tax credit exemptions for the chapter 13 trustee. As for the argument that credit will become more expensive, creditors are not prevented from obtaining voluntary collateralization from debtors. As the student loan crises continues, should this be the law, debtors will have legal protection that will enable them to continue to participate in the middle class and not be pushed down into poverty as a result of garnishment, bankruptcy, and execution.

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 Consumer Protection and Commerce
February 4, 2015

Testimony in Opposition to HB 375, Relating to Property

LATE

To: The Honorable Angus McKelvey, Chair
The Honorable Justin H. Woodson, 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 70 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are opposed to HB 375 as presently written.

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.

By dramatically increasing the real property exemption in HRS §651-92 from \$30,000 to the real property tax assessed value, HB 375, will make it more difficult for credit unions to collect the debts owed them. For practical purposes, HB 375 would exempt a member's interest in a parcel of real property from payment of the member's debt to the credit union.

Also, we do not understand the intent of the proposed addition of subsection (c) to §651-92. It appears to exempt from execution all real property of a judgment debtor who is otherwise not delinquent in payment of income taxes and real property taxes or payment of a mortgage. That judgment debtor may have defaulted on other forms of credit, including home equity lines of credit, credit cards, personal and motor vehicle loans. We do not believe a judgment debtor's real property should be a protected asset not available to pay the debtor's legitimate creditors.

Also, HB 375 seeks to amend HRS §§651-121(1) and 121(2) by changing the exemption for personal property from \$1,000 to "fair market value" of the personal property and changing the exemption for a motor vehicle from \$2,575 to "fair maker value" of the motor vehicle. Both changes will have the effect of insulating the personal property and motor vehicles from being available to satisfy legitimate judgment debts.

Thank you for the opportunity to provide comments.