



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

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 993, RELATING TO PROPERTY.

**BEFORE THE:**  
SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, February 19, 2015                      **TIME:** 9:00 a.m.  
**LOCATION:** State Capitol, Room 016  
**TESTIFIER(S):** Russell A. Suzuki, Attorney General, or  
Ryan S. Endo, Deputy Attorney General

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Chair Keith-Agaran 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.

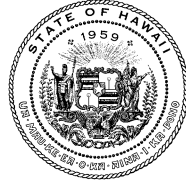
Regarding the exemption for tax refunds, under 45 CFR § 302.60 and 303.72, CSEA is required to submit notifications to the U.S. Department of Health and Human Services, Office of Child Support Enforcement, of those individuals that have past-due support qualifying for federal tax refund offset. The federal 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  
DIRECTOR OF TAXATION

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

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Senate Committee on Judiciary and Labor

Date: Thursday, February 19, 2015  
Time: 9:00 A.M.  
Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 993, Relating to Property

The Department of Taxation (Department) opposes certain provisions of this measure and provides the following comments regarding S.B. 993 for your consideration.

S.B. 993 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 regard to whether such item is 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.

# Collection Law Section

**Chair:**  
Steven Guttman

**Vice Chair:**  
William J. Plum

**Secretary:**  
Thomas J. Wong

**Treasurer:**  
Arlette S. Harada

**Directors:**  
Lynn Araki-Regan  
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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**

February 17, 2014

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Committee on Judiciary and Labor

**Re: SB 993 Relating to Property**  
**Hearing: Thursday, Feb. 19, 2015, 9:00 a.m.**

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro and Members  
of the Committee:

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

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.

First and foremost, 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.

The Collection Law Section also joins in the opposition testimony  
to the companion HB375 submitted by the Department of the  
Attorney General.

As the AG noted in its opposition, this bill 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  
section 651-121(1) and (2), which exempt from attachment and  
execution certain personal property and one vehicle, up to fair

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<sup>1</sup> *The comments and recommendations submitted reflect the position and  
viewpoint of the Collection Law Section of the HSBA. The position and  
viewpoint have not been reviewed or approved by the HSBA Board of  
Directors and are not necessarily the same as those of the Hawaii State Bar  
Association.*

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 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?

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, frequently the sole remedy that exists as a practical matter. The amendments section 651-92(a) enable debtors to shelter money from state agencies in the form of equity in any real property, up to its real property tax assessed value, including any home of any value, including 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, 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.

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.

The new subsection section 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.

Testimony of the Collection Law Section  
Twenty-Eighth Legislature, 2015  
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February 17, 2015  
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The effect of this addition creates a debtor's shelter from creditors, including state agencies. Debtors could become current on their income tax, real property tax or mortgage payments, then no judgment liens could attach to or be executed upon 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.

The amendments to section 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 AG's testimony, these amendments would effectively prohibit state government from collecting moneys using the tax refund setoff statute from debtors who owe money to the State. This will 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.

If this bill is passed limiting the type of tax refunds that can be attached, it may very well jeopardize Federal welfare funding and Federal funding of the child support enforcement programs.

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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To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Members of the Committee on Judiciary and Labor

From: Guardian Capital Management Hawaii  
1132 Bishop Street, Suite 303  
Honolulu, HI 96813

Date: February 18, 2015

Re: SB 993 Relating to property

My name is Kevin Shiinoki, and I am the President of Guardian Capital Management Hawaii. We are a full-service collection agency providing services to over 500 businesses across the state. I am submitting testimony in opposition to SB 993.

I oppose SB 993 because it will create an unlimited opportunity for consumers to default on loans and financial obligations. A monetary judgment obtained in court would be rendered meaningless, as there would be no way to enforce the judgment on almost any property owned by a consumer. Most creditors would not be able to enforce their legal rights. I'm sure this is not the intent of the bill as written, but unfortunately this could be the result.

SB 993 also would eliminate wage garnishment as a means to recover a judgment. The wording of Section 651-121(6) exempts wages earned in the 31 days prior to the proceeding from garnishment. This would mean that the families who are living paycheck to paycheck would have nothing to be garnished since the money would already be spent.

Thank you for the opportunity to submit this testimony.

Presentation To  
Senate Committee on Judiciary and Labor  
February 19, 2015 at 9:00 am  
State Capitol Conference Room 016

**Testimony in Opposition to Senate Bill 993**

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair  
The Honorable Maile S. L. Shimabukuro, 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 SB 993 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, allowing the debtor to shelter much of their assets from creditors.

In written testimony opposing companion bill HB 375, the Department of the Attorney General articulates very well the numerous other issues with this measure. We are in complete agreement with their assertions, leading further to our position that SB 993 should not pass out of your committee.

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



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)



Testimony to the Senate Committee on Judiciary and Labor  
February 19, 2015

Testimony in Opposition to SB 993, Relating to Property

To: The Honorable Gilbert Keith Agaran, Chair  
The Honorable Maile Shimabukuro, 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 SB 993 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, SB 993 will make it more difficult for credit unions to collect the debts owed them. For practical purposes, SB 993 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, SB 993 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 market 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.

# 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

February 17, 2015

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
and members of the Senate Committee on Judiciary and Labor  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **S.B. 993 (Property)**  
**Hearing Date/Time: Thursday, February 19, 2015, 9:00 a.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.

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 and encourage certain debtors, who have properties with a lot of equity, to avoid paying their contractual obligations. Additionally some of the provisions in this Bill are vague and confusing.

We also incorporate by reference the various concerns raised in the testimony of 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



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

February 18, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor  
State Capitol, Room 16  
Honolulu, Hawaii 96813

Re: Senate Bill 993 Relating to Property

**Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate  
Committee on Judiciary and Labor:**

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 or support the origination 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.

The MBAH opposes Senate Bill 993 as it 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 as changing the current exemption of \$30,000 to the most recent real property tax assessment value may exempt the entire property from attachment.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA  
Mortgage Bankers Association of Hawaii

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB993 on Feb 19, 2015 09:00AM  
**Date:** Tuesday, February 17, 2015 9:30:11 AM

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**SB993**

Submitted on: 2/17/2015

Testimony for JDL on Feb 19, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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 of passage, the value of those exemptions would have protected Hawaiian consumers' participation in the middle class. This measure goes a long way toward rectifying that legislation. As a bankruptcy lawyer for over 27 years, having analyzed over 1000 Hawaii households, this measure will provide a much needed safety net from creditor collection actions and clarify the tax credit exemptions for administration by bankruptcy trustees. As the student loan crises continues, should this be the law, debtors will have legal protection to enable them to continue to participate in the middle class and not be pushed into poverty as a result of bankruptcy or execution. Valuing personal property by debtors has been an accepted practice by the U.S. Bankruptcy Courts and trustees for 35 years using such resources as Kelley Blue Book and Craigslist, ebay, and the like. This legislation does not affect a creditor's ability to garnish wages.

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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