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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
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Honolulu, Hawaii 96813

## Written Comments

### **SB566, SD1, HD1 RELATING TO HOMESTEAD EXEMPTIONS**

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the House Committee on Committee on Consumer Protection & Commerce

Tuesday, March 23, 2021, 2:00 p.m.  
Conference Room 329

Chair Johanson and Members of the Committee:

Good afternoon Chair Johanson and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written **comments** on S.B. No. 566, S.D. 1, H.D. 1, Relating to Homestead Exemptions.

The purpose of this measure, pursuant to section 2(a) of the measure, is to require the Legislative Reference Bureau to conduct a study to determine the appropriate amount of an increase to the homestead exemption under the United States Bankruptcy Code. Section 2(b) of the measure also requires the study to examine the State's real property exemption for a person's principal residence in bankruptcy proceedings, pursuant to section 651-92, Hawaii Revised Statutes, and include:

- (1) A breakdown and comparison of real property and homestead exemptions in states similar in size to the State or with a similar tax structure;
- (2) A comparison of how real property and homestead exemptions are applied in other states, comparing their similarities and differences to the State's homestead exemption;
- (3) Any fiscal implications to the State, counties, and private sectors as a result of an increased homestead exemption; and

- (4) An assessment of the number and frequency of claims for the homestead exemption in the State.

Section 2(c) of the measure also requires the Bureau, in conducting the study, to seek input from the Department of Commerce and Consumer Affairs; Department of Business, Economic Development and Tourism; Department of Budget and Finance; Department of Taxation; financial institutions; institutions representing business; National Conference of State Legislatures; and any other relevant entity.

Section 2(d) of the measure further requires the Bureau to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2022.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

As an initial matter with regard to the study required of the Bureau, the language of section 2(a) of the measure is unclear, as it requires the Bureau to "determine the appropriate amount of an increase to the homestead exemption *under the United States Bankruptcy Code*." We note that the Title 11 of the United States Code, commonly known as the "United States Bankruptcy Code," is a federal law. In light of the remaining provisions of the measure, we assume that the measure's proponents are not seeking to amend federal law; rather, they intend to comport state law with federal law. It remains unclear, however, whether the reference to the United States Bankruptcy Code in section 2(a) of the measure is intended to mean that the Bureau "shall conduct a study to determine the appropriate amount of an increase to the state homestead exemption *that conforms to any equivalent exemption established in Title 11 of the United States Code*," or whether it is intended to read that the Bureau "shall conduct a study to determine the appropriate amount of an increase to the state homestead exemption; *provided that the amount determined is not in violation of or preempted by Title 11 of the United States Code*." As explained below, the necessity of the study may depend upon the intended reading of section 2(a).

The Bureau notes that the existing language of section 651-92, Hawaii Revised Statutes, provides that real property shall be exempt from attachment or execution as follows:

- (1) An interest in one parcel of real property in the State of Hawaii, of a fair market value not exceeding \$30,000, owned by the defendant who is either the head of a family or an individual sixty-five years of age or older; and
- (2) An interest in one parcel of real property in the State of Hawaii, of a fair market value not exceeding \$20,000, owned by the defendant who is a person.

The equivalent federal exemption appears in Title 11 United States Code Section 522(d)(1). Specifically, the exemption applies to the "debtor's aggregate interest, not to exceed \$15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . . ." However, by operation of Title 11 United States Code Section 104(a), this amount is adjusted every three years, on April 1, to reflect the Consumer Price Index for All Urban Consumers, rounded to the nearest \$25. According to a notice in the February 12, 2019, *Federal Register*, the exemption amount was increased to \$25,150, effective April 1, 2019.

Title 11 United States Code Section 522(b), essentially authorizes a debtor to choose whether the federal exemption will apply, or whether state law will apply, unless state law specifically does not authorize the debtor to elect Title 11 United States Code Section 522(d)(1), to apply.

Accordingly, if the intent of section 2(a) of the measure is for the study to determine the appropriate amount of an increase to the state homestead exemption *that conforms to any equivalent exemption established in* Title 11 of the United States Code, it would appear that a study would be unnecessary, as the Committee could simply amend the measure by deleting its contents and inserting amendments to section 651-92, Hawaii Revised Statutes, that reflect applicable language from Title 11 United States Code Sections 104(a) and 522(d)(1).

However, if the intent of section 2(a) of the measure is for the study to determine the appropriate amount of an increase to the state homestead exemption; *provided that the amount determined is not in violation of or preempted by* Title 11 of the United States Code, then we note that the Bureau has found no provision in Title 11 that establishes a minimum amount or a maximum amount for a state's homestead exemption. Accordingly, it appears that the State may choose to establish a homestead exemption at any amount, based upon its own policy preferences.

If the Committee wishes the Legislature to have pertinent factual information upon which to make a policy determination for establishing a state homestead exemption, the Bureau believes that it can provide the Legislature with the information required in section 2(b)(1) and 2(b)(2) of the measure.

However, the Bureau has serious concerns with the remainder of the work requested of the Bureau in this measure. The Bureau has no specific expertise or experience regarding bankruptcy law or policy, civil remedies and defenses, homestead exemptions, financial institutions and businesses, or fiscal analysis. Given the full scope of the requests made by this measure, the Bureau would need to contract the services of relevant experts and analysts to provide the Legislature with any meaningful information concerning "fiscal implications," as required in section 2(b)(3) of the measure, or an "assessment" of the number and frequency of claims for the homestead exemption in the State, under section

2(b)(4) of the measure. We note, however, that the Bureau's annual operating budget does not contain funds for the contracting of study services.

Further, the Bureau anticipates that it would not be able to obtain the data necessary for the assessment requested under section 2(b)(4). It is our experience that if an agency does not regularly compile requested statistics in the normal course of its operations, those statistics will not be obtained and made available for the Bureau to review in a timely manner. Notably, we could not find any statistics on the number or frequency of claims for homestead exemptions on the website for the United States Bankruptcy Court for the District of Hawaii. We contacted the court directly and have confirmed that the court does not compile this information. Accordingly, we believe that obtaining the data necessary for the requested "assessment" is simply not possible.

With regard to section 2(c) of the measure, it is not clear which financial institutions and institutions representing business should be consulted. Given the vast number of institutions that may be affected by an increase in the homestead exemption, we anticipate that the initiation of communications to those institutions, the sending of follow-up communications to those institutions, and the compilation of responses from those institutions will prove far too time-consuming for a report that is due within an approximate six-month timeframe. We further note that, given the diverse array and number of entities specified in section 2(c), the Bureau would be hard-pressed to determine which parties' input (which is likely to be highly dissimilar depending upon their perspectives) should be given weight over others.

In light of the foregoing concerns, the Bureau offers several workable alternatives for the Committee's consideration:

- (1) It would seem more immediately beneficial to amend the measure to delete the requested study and establish a Homestead Exemption Working Group of stakeholders to determine the appropriate amount of an increase to the homestead exemption and report back to the Legislature with proposed legislation. If the measure is amended to create a working group in this manner and the Committee desires to keep the Bureau involved, we would respectfully request that the measure be further amended to have the Bureau assist with only conducting research and assisting the working group in the finalization of its report to the Legislature, including drafting proposed legislation. Further, we would ask that the working group submit to the Bureau by August 1, 2021, any draft documents, information, and other materials deemed necessary by the Bureau, to allow us adequate time to prepare the final report and any relevant bill drafts.
- (2) If the Committee desires the Bureau to provide the Legislature with pertinent factual information upon which to make a policy decision regarding the state homestead exemption amount, then we would respectfully request that:

- (A) Section 2(a) of the measure be clarified by replacing its existing language with a requirement that the Bureau conduct a study on potentially relevant factors in amending the homestead exemption in section 651-92, Hawaii Revised Statutes;
  - (B) Section 2(b)(3) of the measure be deleted, or in the alternative, amended to replace its existing language with a requirement that the Bureau summarize the various opinions of the entities specified in section 2(c) regarding the potential fiscal impact to the State, the counties, and private entities of a proposed increase in the homestead exemption;
  - (C) Section 2(b)(4) of the measure be deleted; and
  - (D) Section 2(c) of the measure be amended to:
    - (i) Include the finance departments of the several counties and require the specified state departments and the finance departments of the several counties to provide the Bureau with any information deemed necessary by the Bureau no later than August 1, 2021; and
    - (ii) Replace the vague references to "financial institutions" and "institutions representing business" with the names of a manageable number of specific organizations or stakeholders that represent financial institutions and business interests.
- (3) If the Committee wishes for the Bureau to remain responsible for the study as drafted, we would respectfully request that the measure be amended by inserting an appropriation for the hiring of experts in fiscal analysis and bankruptcy and by exempting the Bureau from the public procurement code to expedite the procurement process, or providing the Bureau additional time in which to complete the study, or both.

If the measure is amended to adopt any of the three alternatives suggested by the Bureau, then the Bureau believes that its amended responsibilities could be manageable; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for the opportunity to submit written comments.

# HAWAII FINANCIAL SERVICES ASSOCIATION

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March 23, 2021

Rep. Aaron Ling Johanson, Chair  
Rep. Lisa Kitagawa, Vice Chair  
and members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **S.B. 566, S.D. 1, H.D. 1 (Homestead Exemptions)**  
**Hearing Date/Time: Tuesday, March 23, 2021, 2:00 p.m.**

I'm 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 offers comments on this Bill.**

The H.D. 1 version requires the Legislative Reference Bureau (LRB) to conduct a study to determine the increase to the homestead exemption in bankruptcy proceedings.

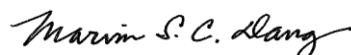
We want to point out that this Bill does not deal with homeowner exemptions for real property tax assessments. The homestead exemption in this Bill deals with a different matter, i.e. an exemption from creditors. Currently the homestead exemption amounts are either \$20,000 or \$30,000.

The original version of this Bill would have increased the homestead exemption for all persons to \$2,000,000 and would have required that the real property be the principal residence. The Senate Draft 1 version would change the homestead exemption for all persons to \$350,000.

The HFSA opposed the original version of this Bill and the Senate Draft 1 version. We stated that those versions as drafted did not seem to be sound public policy. For example, S.D. 1 would enable a debtor, who has a principal residence with equity of **up to Three Hundred Fifty Thousand (\$350,000)**, to avoid paying their debts and other contractual obligations. The debtor could use their residence to shelter up to **\$350,000** in assets from creditors. An unintended consequence of the original version of this Bill and the S.D. 1 version is that consumers and other borrowers could be negatively impacted. That's because lenders and other creditors might need to tighten their underwriting standards for loans or other credit to ensure that the lenders and creditors get repaid the monies that are loaned or advanced.

The approach in the House Draft 1 version of this Bill is preferable to the approach in the previous versions because it requires a study by the LRB before the 2022 legislative session. In conducting the study of homestead exemptions in bankruptcy proceedings, the LRB is required to seek input from financial institutions, institutions representing businesses, various State agencies, the National Conference of State Legislatures, and any other relevant entity.

**Ideally, the LRB would seek input from financial institutions through the Hawaii Financial Services Association, the Hawaii Bankers Association, and the Hawaii Credit Union League.**



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



Testimony to the House Committee on Consumer Protection and Commerce  
March 23, 2021, 2:00 pm  
Hawaii State Capitol, Via Videoconference

Testimony in Opposition to SB 566, Relating to Homestead Exemptions

To: The Honorable Aaron Johanson, Chair  
The Honorable Lisa Kitagawa, 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 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following comments in opposition to SB 566, Relating to Homestead Exemptions.

The majority of Hawaii's credit unions currently offer mortgages and other forms of credit to their members. Credit unions are not-for-profit 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 SB 566, and concur with the testimony presented by the Hawaii Bankers Association and the Hawaii Financial Services Association.

Thank you for the opportunity to provide comments.