

A Bill for an Act Relating to Exemptions from Attachment and Execution.

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

SECTION 1. Chapter 651, part III, Hawaii Revised Statutes, is amended by adding a new subpart B to be appropriately designated and to read as follows:

**“B. REAL PROPERTY**

**Sec. 651- Definitions.** As used in this subpart:

- (1) “Head of a family” includes within its meaning:
  - (A) A man and woman when married, except as provided in section 651-
  - (B) Every individual who is residing on the real property with the man or woman, and under his or her care or maintenance, either:
    - (i) His or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband;
    - (ii) A minor brother or sister, or the minor child of a deceased brother or sister;
    - (iii) A father, mother, grandfather, or grandmother;
    - (iv) The father, mother, grandfather, or grandmother of a deceased husband or wife;
    - (v) An unmarried brother, sister, or any other of the relatives mentioned in this subparagraph, who have attained the age of majority, and are unable to take care of or support themselves.
  - (C) Every individual who is divorced or whose spouse is deceased and who has residing with him or her any of the individuals designated in subparagraph (B).
- (2) “Long-term lease” means a lease for twenty years or more.
- (3) “Owner” means an individual who has an interest in real property.
- (4) “Person” means any individual under sixty-five years of age other than the head of a family.
- (5) “Real property” consists of the dwelling house in which the owner resides and one parcel of land not to exceed one acre, upon which it is situated together with other buildings thereon. This parcel may be in fee simple or any other interest in real property which vests the immediate

right of possession, even though such right of possession is not exclusive, and includes land held under long-term lease, ownership rights in a condominium or stock cooperative unit.

**Sec. 651- Real property exempt.** Real property shall be exempt from attachment, execution, distress, demand, and forced sale of every nature and description as follows:

- (1) Real property of a fair market value not exceeding \$30,000 owned by the head of a family or by an individual sixty-five years of age or older.
- (2) Real property of a fair market value not exceeding \$20,000 owned by any person.

The amounts exempted in paragraphs (1) and (2) shall be determined by appraisal and shall be that amount which is over and above all liens and encumbrances on the real property at the time of any levy and execution thereon; provided that the amount exempted shall in no case exceed \$30,000. An exemption authorized under this section shall not apply to claims of mechanics and materialmen for labor performed and material furnished in the creation, alteration, or repair of the real property.

Any claim of exemption under this section made before the effective date of this part, shall be deemed to be amended on the effective date of this part, by increasing the value of any real property declared exempt to the value permitted by this section on the effective date of this part, to the extent that such increase does not impair or defeat the right of any creditor who has executed upon the real property which existed before the effective date of this part.

**Sec. 651- Effect of separation, divorce, reconciliation.** Following the entry of a decree of separate maintenance or an interlocutory decree of divorce, each spouse may claim a separate real property exemption under this part as a person. A subsequent reconciliation of the spouses when evidenced by a dismissal of the divorce action or vacation of the decree of separate maintenance executed by both spouses or their attorneys of record shall cancel a separate claim for a real property exemption and the spouses shall only have one real property exemption.

**Sec. 651- Proceedings where real property can be divided without material injury.** If, from the appraiser's report, it appears to the judge that the real property claimed can be divided without material injury, he shall, by order, direct the appraisers to set off to the claimant so much of the real property, including the residence and outbuildings, as will amount in value to the real property exemption and all liens and encumbrances and the execution may be enforced against the remainder of the real property subject to all liens and encumbrances; provided that all costs, attorneys and appraisers fees, and any other fees that may necessarily arise shall be borne solely by the judgment creditor.

**Sec. 651- Sale where real property cannot be divided; application of proceeds.** If, from the appraiser's report, it appears to the court that the real property claimed exceeds in value, over and above all liens and encumbrances thereon, the amount of the real property exemption, and that it can not be divided, he shall make an order directing its sale under the execution.

If the sale is made, the proceeds thereof shall be applied in the following

order of priority: first, to the discharge of all liens and encumbrances, if any, on the real property; second, to the real property exemption claimant to the amount of the exemption; third, to the satisfaction of the execution costs, attorneys and appraisers fees, and any other fees that may necessarily arise; fourth, to the satisfaction of the judgment and fifth, the balance, if any, to the claimant.

**Sec. 651- After sale, money equal to real property exemption protected.** The money paid to the claimant as his exemption shall be entitled, for the period of six months thereafter, to the same protection against legal process which section 651- gives to the real property.”

SECTION 2. Chapter 651, part III, Hawaii Revised Statutes, is amended by adding a new subpart C to be appropriately designated and to read as follows:

**“C. PERSONAL PROPERTY**

**Sec. 651- Certain personal property and insurance thereon, exempt.** The following described personal property up to the value set forth shall be exempt from attachment, execution, distress, demand, and forced sale of every nature and description as follows:

- (1) All necessary household furnishings and appliances, books and wearing apparel, ordinarily and reasonably necessary to, and personally used by a debtor or his family residing with him; and, in addition thereto, jewelry, watches, and items of personal adornment up to an aggregate cash value not exceeding \$1,000.
- (2) One motor vehicle up to a value of \$1,000 over and above all liens and encumbrances on the motor vehicle; provided that the value of the motor vehicle shall be measured by established wholesale used car prices customarily found in guides used by Hawaii motor vehicle dealers; or, if not listed in such guides, fair wholesale market value, with necessary adjustment for condition.
- (3) Any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and nets, one motor vehicle, and other personal property ordinarily and reasonably necessary to and personally owned and used by the debtor in the exercise of his trade, business, calling, or profession by which he earns his livelihood.
- (4) One parcel of land, not exceeding two hundred fifty square feet in size, niche or interment space owned, used, or occupied by any person, or by any person jointly with any other person or persons, in any graveyard, cemetery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all gravestones, tombstones, monuments, and other appropriate improvements thereon erected.
- (5) The proceeds of insurance on, and the proceeds of the sale of, the property in this section mentioned, for the period of six months from the date the proceeds are received.
- (6) The wages, salaries, commissions, and all other compensation for per-

sonal services due to the debtor for services rendered during the thirty-one days before the date of the proceeding.

**Sec. 651- Personal property not exempt.** No article or type of personal property mentioned in section 651- is exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage thereon or for taxes or fines or any debt due the State.

**Sec. 651- Application of proceeds of sale.** When the property thus taken is sold the proceeds of the sale thereof shall be applied in the following order of priority: first, to the discharge of all liens and encumbrances, if any, on the personal property; second, to the personal property exemption claimant to the amount of the exemption; third, to the satisfaction of the execution costs, attorneys and appraisers fees, and any other fees that may necessarily arise; fourth, to the satisfaction of judgment, and fifth, the balance, if any, to the claimant."

SECTION 3. Chapter 651, part III, subpart A, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designed and to read as follows:

**"Sec. 651- Proceedings on execution; appraisers; expiration of lien, result.** When an execution for the enforcement of a judgment is levied upon real or personal property under subpart B or C, the judgment creditor may at any time within sixty days thereafter apply to the court for the appointment of a person or persons to appraise the value thereof. If such application is not made within sixty days after the levy of such execution the lien of the execution shall cease at the expiration of such period, and no execution based upon the same judgment shall thereafter be levied upon the real or personal property.

**Sec. 651- Application form contents.** The application shall be made upon a verified petition of the judgment creditor filed with the court showing:

- (1) The fact that an execution has been levied upon the real or personal property within sixty days prior to the filing of the petition.
- (2) A description of the real or personal property and the name of the claimant of an exemption under subpart B or C.
- (3) That the value of the real or personal property, over and above all liens and encumbrances thereon, exceeds the amount of the real or personal property exemption.
- (4) That no previous execution arising out of the same judgment has been levied upon the real or personal property.

**Sec. 651- Service of petition and notice of hearing; effects of failure to serve; appointment of appraisers.** Within ninety days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, shall be served personally by any person over the age of majority and by certified mail, return receipt requested, upon the claimant or his attorneys at least ten days before the hearing, then upon affidavit or refusal of such services or inability to locate upon diligent search and inquiry, by publication once in a newspaper of general circulation in the State at least twenty days before the hearing. If the notice is not served, the lien of the execution shall cease at the expiration of the ninety-day period, and no execution based upon the same judgment shall

thereafter be levied upon the real or personal property.

At the hearing the court may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint one to three disinterested residents of the county in which the property is situated to appraise the value of the real or personal property.”

SECTION 4. Sections 651-62 and 651-63, Hawaii Revised Statutes, are amended to read:

“**Sec. 651-62 Indemnity bond if exemption claimed.** If any officer levies or is about to levy an attachment, execution, or other process on any property claimed as exempt under subpart C, and a doubt arises as to the liability of the property to be seized or sold, he may demand of the plaintiff a bond with sufficient sureties, payable to the officer, in a sufficient penalty, conditioned to indemnify and save harmless the officer against all damages, costs, and expenses which he may sustain in consequence of the seizure or sale of the property. If the bond is not given after twenty-four hours’ notice in writing from the officer to the plaintiff, his agent, or attorney, if it is required, the officer may refuse to levy, or, having levied, may dismiss the levy. If the required bond is given, the officer shall seize and sell or dispose of the property according to the command of the process in his hands.

**Sec. 651-63 Liability for selling exempt property.** If any officer or other person seizes or sells any property exempt from execution under subpart C, he shall be liable to an action at the suit of the owner for all damages and costs sustained thereby, including an attorney’s fee to be fixed by the court before which the action is tried, and the fact that the officer or person has demanded and received the indemnifying bond mentioned in section 651-62 shall not exempt him from the liability in this section specified.”

SECTION 5. Sections 651-65, 651-66, and 651-67, Hawaii Revised Statutes, are repealed.

SECTION 6. Chapter 651, part III, Hawaii Revised Statutes, is amended by designating sections 651-61 to 651-64 as subpart A titled “Generally”.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 8. This Act shall take effect upon its approval.

(Approved May 27, 1976.)

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\*Edited accordingly.