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S.B. NO. 3221

A Bill for an Act Relating to Real Property Liens.

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

SECTION 1. Section 346-29.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-29.5]]~~ **Real property liens.** (a) The department of human services may require of any person applying for or currently receiving assistance under the department’s programs, including but not limited to aid to families with dependent children, medicaid, food stamps, and general assistance, who owns or has any interest in real property, that the person shall enter into an agreement with the department that future grants of assistance shall be and constitute a lien against the interest in real property, and shall remain a lien until satisfied and discharged, [except that the obligation based on a lien held by the department on] with the exception of home property lived on by the assistance household [shall not exceed \$20,000].

(b) The agreement shall be recorded in the bureau of conveyances, or filed in the office of the assistant registrar of the land court. When the agreement for the lien is recorded in the bureau of conveyances, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. From and after the recording in the bureau of conveyances the lien shall attach to all interests in real property then owned by the person and not registered in the land court, and from and after the filing thereof in the office of the assistant registrar of the land court the lien shall attach to any such interest in land then registered therein. The lien shall be for all amounts of assistance, unless otherwise provided by rules [and regulations promulgated under] adopted pursuant to chapter 91, then or thereafter paid in accordance with the [aforementioned] programs from which the person receives assistance[, except that the obligation based on a lien held by the department on home property lived on by the assistance household shall not exceed \$20,000].

(c) The department shall issue certificates of release or partial release upon satisfaction or partial satisfaction of the lien. Certificates of release or partial release of any real property lien issued by the director of the department or the director’s authorized representative shall be recorded in the bureau of conveyances. The registrar shall forthwith cause the same to be indexed in the general indexes in a like manner as the original lien. No fee shall be charged for any of the recording. The lien herein provided for shall take priority over any other lien subsequently acquired or recorded except tax liens and except that, in the estate of a beneficiary, the actual funeral expenses, the expenses of the last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate, shall have priority and preference over the lien herein imposed, and over any claim against an estate filed under section 346-37.

The lien shall be enforceable by the department by suit in the appropriate court or shall be enforceable as a claim against the estate of the recipient under section 346-37, having priority over all other debts except taxes, the actual funeral expenses, the expenses of last sickness, the cost of administration of the estate,

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and any allowance made to the surviving spouse and children for their support during administration of the estate.

[The lien shall not be enforced against the home of a beneficiary while it is being occupied by the beneficiary or by any surviving spouse who has not remarried, or by any surviving minor child or any physically or mentally handicapped child of the recipient, and such other persons as the department may by regulation designate pursuant to chapter 91.] The lien shall be enforceable as a claim under section 346-37 against the estate of a recipient under any circumstances if the estate is admitted to probate at the instance of any interested party other than the department.

Whenever the department is satisfied that the collection of the amount of assistance paid a recipient will not be jeopardized or that the release or waiver of the priority of the lien against the recipient's property, in whole or in part, is necessary to provide for the maintenance or support of the recipient, the recipient's spouse, or any minor or incapacitated child, it may release or waive the priority of the lien with respect to all or any part of the real property.

The recipient, the recipient's heirs, personal representatives, or assigns may discharge the lien at any time by paying the amount thereof to the department which shall execute a satisfaction thereof. The department may at its discretion compromise the collection of any such lien, but such compromise shall be made only when the recipient, the recipient's heirs, personal representatives or assigns prove that the collection of the full amount of the lien or claim would cause undue hardship or the lien or claim is otherwise uncollectible.

The proceeds from the enforcement, payment, or compromise of the lien shall be paid into the treasury of the State. If the amount of assistance reflected by the proceeds was paid in part by federal funds, the proper portion of these funds shall be paid by the director of finance to the treasury of the United States. The director of finance shall thereupon report such payment to the department. If the federal funds are not paid directly into the treasury of the United States, these federal funds shall be credited by the director of finance to the department for expenditure for assistance without need for further appropriation.

If at any time the federal government, or any agency or instrumentality thereof, requires, as a condition to any grant of assistance, the performance of conditions inconsistent with this section, or desisting from actions provided by this section, the governor may suspend, upon a finding to that effect and to the extent of such requirement, [suspend] any provisions of this section to the end that such federal assistance may be received.

The department shall submit an annual report to the legislature, which shall include a list of liens held by the department on real property. This report shall include, but not be limited to a description of the value of the liens, the legal status of the liens and when the liens were initiated.

The department shall [promulgate] adopt rules [and regulations under] pursuant to chapter 91 [to implement] necessary for the purposes of this section."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 14, 1988.)