

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO ATTACHMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the current  
2           statutory exemptions from attachment or execution of real and  
3           personal property need to be updated to create a safety net of  
4           assets for Hawaii families who are struggling to earn a living  
5           under heavy debt obligations. These families include workers  
6           who live from paycheck to paycheck and have incurred debt due to  
7           an unexpected event such as a job layoff, accident, or illness.  
8           This Act takes into account the need to allow temporarily  
9           unemployed workers and their families, who possess a minimal  
10          amount of assets and do not want to be on government benefits  
11          indefinitely, to retain their assets and support themselves in  
12          times of personal economic crisis.

13          The legislature further finds that the 2013 National  
14          Consumer Law Center Studies on States Allowing Debt Collectors  
15          to Push Families Into Poverty has rated Hawaii with a "D" in  
16          protecting households from poverty.



1           The existing law regarding asset protection for real  
2 property found in section 651-92, Hawaii Revised Statutes, has  
3 not been updated since 1978. According to the U.S. Census, the  
4 median price for a house or condominium in Hawaii in 1978 was  
5 \$233,800, compared to the current median price of \$750,000. The  
6 Hawaii Revised Statutes only protects \$30,000 beyond mortgage  
7 obligations.

8           Additionally, the current law regarding asset protection  
9 for personal property found in section 651-121, Hawaii Revised  
10 Statutes, has not been updated since 1999 and does not include  
11 protections of amounts received for child or spousal support.

12           The purpose of this Act is to:

13           (1) Increase the amount of the exemption from attachment  
14 or execution of:

15           (A) Real property that is owned by any individual who  
16 is not delinquent on income taxes, real property  
17 taxes, or mortgages; and

18           (B) A motor vehicle; and

19           (2) Exempt one month of child support and spousal support  
20 from attachment or execution.



1 SECTION 2. Section 651-92, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§651-92 Real property exempt.** (a) [~~Real property shall~~  
4 ~~be exempt from attachment or execution as follows:~~

5 ~~(1)] An interest in one parcel of real property in the~~  
6 ~~State of Hawaii, [of a fair market value not exceeding~~  
7 ~~\$30,000, owned by the defendant who is either the head~~  
8 ~~of a family or an individual sixty five years of age~~  
9 ~~or older.] including properties under the department~~  
10 ~~of Hawaiian home lands, of a fair market value not~~  
11 ~~exceeding \$50,000, that is owned by the defendant,~~  
12 ~~shall be exempt from attachment or execution.~~

13 [~~(2) An interest in one parcel of real property in the~~  
14 ~~State of Hawaii, of a fair market value not exceeding~~  
15 ~~\$20,000, owned by the defendant who is a person.]~~

16 The fair market value of the interest exempted [~~in paragraph (1)~~  
17 ~~or (2)] shall be determined by appraisal and shall be an~~  
18 ~~interest [which] that is over and above all liens and~~  
19 ~~encumbrances on the real property recorded prior to the lien~~  
20 ~~under which attachment or execution is to be made. Not more~~  
21 ~~than one exemption shall be claimed on any one parcel of real~~



1 property even though more than one [~~person~~] individual residing  
2 on such real property may otherwise be entitled to an exemption.

3 Any claim of exemption under this section made before [~~May~~  
4 ~~27, 1976,~~] July 1, 2021, shall be deemed to be amended on [~~May~~  
5 ~~27, 1976,~~] July 1, 2021, by [~~increasing~~] amending the exemption  
6 to the amount permitted by this section on [~~May 27, 1976,~~] July  
7 1, 2021, to the extent that [~~such increase~~] the amendment does  
8 not impair or defeat the right of any creditor who has executed  
9 upon the real property prior to [~~May 27, 1976,~~] July 1, 2021.

10 (b) No exemption authorized under this section shall apply  
11 to process arising from:

- 12 (1) A lien as provided by section 507-42;
- 13 (2) A lien or security interest created by a mortgage,  
14 security agreement, or other security instrument;
- 15 (3) A tax lien in the name of the federal or state  
16 government;
- 17 (4) An improvement district lien of any county of the  
18 State; or
- 19 (5) A lien or encumbrance recorded against the real  
20 property prior to the acquisition of interest in and  
21 commencement of residence on such real property.



1        (c) The exemption from attachment or execution provided in  
2 this section shall not apply to a debtor who is delinquent in  
3 payment of income taxes, real property taxes, or a mortgage, as  
4 applicable."

5        SECTION 3. Section 651-121, Hawaii Revised Statutes, is  
6 amended to read as follows:

7        **"§651-121 Certain personal property and insurance thereon,**  
8 **exempt.** The following described personal property of an  
9 individual up to the value set forth shall be exempt from  
10 attachment and execution as follows:

11        (1) All necessary household furnishings and appliances,  
12 books and wearing apparel, ordinarily and reasonably  
13 necessary to, and personally used by a debtor or the  
14 debtor's family residing with the debtor; and, in  
15 addition thereto, jewelry, watches, and items of  
16 personal adornment up to an aggregate cash value not  
17 exceeding [~~\$1,000,~~] the fair market value of such  
18 items as adjusted by the most recent consumer price  
19 index;

20        (2) One motor vehicle up to [a] the fair market value of  
21 [~~\$2,575~~] \$15,000 over and above all liens and



1 encumbrances on the motor vehicle; provided that the  
2 value of the motor vehicle shall be measured by  
3 established wholesale used car prices customarily  
4 found in guides used by Hawaii motor vehicle dealers;  
5 or, if not listed in such guides, fair wholesale  
6 market value, with necessary adjustment for condition;

7 (3) Any combination of the following: tools, implements,  
8 instruments, uniforms, furnishings, books, equipment,  
9 one commercial fishing boat and nets, one motor  
10 vehicle, and other personal property ordinarily and  
11 reasonably necessary to and personally owned and used  
12 by the debtor in the exercise of the debtor's trade,  
13 business, calling, or profession by which the debtor  
14 earns the debtor's livelihood;

15 (4) One parcel of land, not exceeding two hundred fifty  
16 square feet in size, niche or interment space owned,  
17 used, or occupied by any person, or by any person  
18 jointly with any other person or persons, in any  
19 graveyard, cemetery, or other place for the sole  
20 purpose of burying the dead, together with the railing  
21 or fencing enclosing the same, and all gravestones,



- 1           tombstones, monuments, and other appropriate  
2           improvements thereon erected;
- 3           (5) The proceeds of insurance on, and the proceeds of the  
4           sale of, the property in this section mentioned, for  
5           the period of six months from the date the proceeds  
6           are received; [~~and~~]
- 7           (6) The wages, salaries, commissions, and all other  
8           compensation for personal services due to the debtor  
9           for services rendered during the thirty-one days  
10          before the date of the proceeding[-]; and
- 11          (7) The equivalent of one month of child support, as  
12          defined in section 576D-1, and one month of spousal  
13          support, as defined in section 580-47, in the  
14          possession of a debtor who is the recipient of the  
15          support payment. The exemption shall apply to the  
16          combined total amount of child support and spousal  
17          support even if that amount is comingled with funds  
18          from other sources in a financial account."

19           SECTION 4. Statutory material to be repealed is bracketed  
20           and stricken. New statutory material is underscored.  
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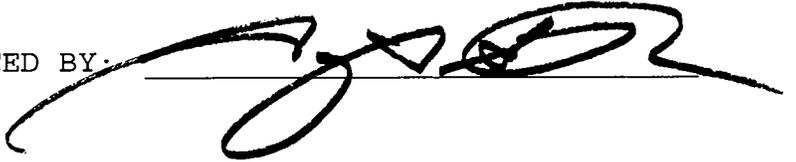


# S.B. NO. 817

1 SECTION 5. This Act shall take effect on July 1, 2021.

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INTRODUCED BY: \_\_\_\_\_

A large, stylized handwritten signature in black ink is written over a horizontal line. The signature is highly cursive and difficult to decipher, but it appears to be a name with a prominent initial.

# S.B. NO. 817

**Report Title:**

Attachment or Execution of Property; Exemptions

**Description:**

Increases the amount of the exemption from attachment or execution of real property that is owned by any individual who is not delinquent on income taxes, real property taxes, or mortgages; and a motor vehicle. Exempts one month of child support and spousal support from attachment or execution.

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