

CHAPTER 226

COURTS

SENATE BILL 07-158

BY SENATOR(S) Boyd, and Groff;
also REPRESENTATIVE(S) Cerbo, Buescher, Borodkin, Butcher, Carroll M., Gallegos, Gibbs, Green, Labuda, Madden,
McGihon, and Merrifield.

AN ACT

CONCERNING ASSETS EXEMPTED FROM EXECUTION IN DEBT COLLECTION PROCEEDINGS, AND, IN CONNECTION THEREWITH, INCREASING THE SCOPE AND VALUE OF ASSETS THAT MAY BE EXEMPTED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The Colorado General Assembly recognizes that it is prudent to periodically review various exemptions allowed in bankruptcy in lieu of providing for an automatic annual adjustment. To facilitate the orderly and timely consideration of these exemptions and assist organized planning to address these exemptions by various parties, it is the intent of the General Assembly to consider relevant statutory changes only every six years, except in the event that unanticipated circumstances arise that necessitate such consideration within that six year period.

SECTION 2. 13-54-101 (4), Colorado Revised Statutes, is amended, and the said 13-54-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

13-54-101. Definitions. As used in this article, unless the context otherwise requires:

(2.5) "DISABLED DEBTOR", "DISABLED SPOUSE", OR "DISABLED DEPENDENT" MEANS A DEBTOR, SPOUSE, OR DEPENDENT WHO HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT IS DISABLING AND THAT, BECAUSE OF OTHER FACTORS SUCH AS AGE, TRAINING, EXPERIENCE, OR SOCIAL SETTING, SUBSTANTIALLY PRECLUDES THE DEBTOR, SPOUSE, OR DEPENDENT FROM ENGAGING IN A USEFUL OCCUPATION AS A HOMEMAKER, A WAGE-EARNER, OR A SELF-EMPLOYED PERSON IN ANY EMPLOYMENT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THAT EXISTS IN THE COMMUNITY AND FOR WHICH HE OR SHE HAS COMPETENCE.

(3.5) "ELDERLY DEBTOR", "ELDERLY SPOUSE", OR "ELDERLY DEPENDENT" MEANS A DEBTOR, SPOUSE, OR DEPENDENT WHO IS SIXTY YEARS OF AGE OR OLDER.

(4) "Household goods" means, by way of illustration, household furniture, furnishings, dishes, utensils, cutlery, tableware, napery, pictures, prints, appliances, stoves, microwave ovens, beds and bedding, freezers, refrigerators, washing machines, dryers, ~~home electronics, including but not limited to television sets, radio sets, videocassette recorders, stereos, computers, facsimile machines and telephones, cameras,~~ exercise equipment, musical instruments, bicycles, sewing machines, ~~and~~ toys, AND HOME ELECTRONICS, INCLUDING BUT NOT LIMITED TO CAMERAS, TELEVISION SETS, RADIOS, STEREOs, COMPUTERS, FACSIMILE MACHINES, TELEPHONES, AND OTHER AUDIO AND VIDEO EQUIPMENT.

SECTION 3. 13-54-102 (1) (b), (1) (g), (1) (i), (1) (j), (1) (o), and (1) (u), Colorado Revised Statutes, are amended, and the said 13-54-102 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

13-54-102. Property exempt. (1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(b) Watches, jewelry, and articles of adornment of the debtor and each dependent to the extent of ~~one~~ TWO thousand dollars in value;

(g) (I) Except as otherwise provided in subparagraph (II) of this paragraph (g), in the case of every debtor engaged in agriculture as the debtor's principal occupation, including but not limited to farming, ranching, dairy production, and the raising of livestock or poultry, all livestock, poultry, or other animals, and all tractors, farm implements, trucks used in agricultural operations, harvesting equipment, seed, and agricultural machinery and tools in the aggregate value of ~~twenty-five~~ FIFTY thousand dollars.

(II) Only one exemption in the aggregate value of ~~twenty-five~~ FIFTY thousand dollars shall be allowed for a debtor and his or her spouse under subparagraph (I) of this paragraph (g). In the event that property is claimed as exempt by a debtor or his or her spouse under subparagraph (I) of this paragraph (g), no exemption shall be allowed for such debtor or his or her spouse under paragraph (i) of this subsection (1).

(i) The stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of any debtor used and kept for the purpose of carrying on any gainful occupation in the aggregate value of ~~ten~~ TWENTY thousand dollars; EXCEPT THAT EXEMPT PROPERTY DESCRIBED IN THIS PARAGRAPH (i) MAY NOT ALSO BE CLAIMED AS EXEMPT PURSUANT TO PARAGRAPH (j) OF THIS SUBSECTION (1);

(j) (I) One or more motor vehicles or bicycles kept and used by any debtor in the aggregate value of ~~three~~ FIVE thousand dollars; or

(II) (A) One or more motor vehicles kept and used by any elderly or disabled

debtor, or by any debtor with an elderly or disabled spouse or dependent, in the aggregate value of ~~six~~ TEN thousand dollars.

~~(B) For the purposes of this subparagraph (II): "Disabled person" means any person who has a physical or mental impairment which is disabling and which, because of other factors such as age, training, experience, and social setting, substantially precludes the person having such impairment from engaging in a useful occupation as a homemaker or as a wage earner in any employment which exists in the community for which he has competence; and "elderly person" means any person who is sixty-five years of age or older.~~

(o) The full amount of any federal or state INCOME TAX REFUND ATTRIBUTED TO AN earned income tax credit ~~refund~~ OR A CHILD TAX CREDIT;

(u) Any COURT-ORDERED DOMESTIC SUPPORT OBLIGATION OR PAYMENT, INCLUDING A MAINTENANCE OBLIGATION OR PAYMENT OR A child support obligation or ~~child support~~ payment, ~~required by a support order~~ if the CHILD SUPPORT OBLIGATION OR PAYMENT MEETS THE requirements of section 13-54-102.5; ~~are met.~~

(v) ANY CLAIM FOR PUBLIC OR PRIVATE DISABILITY BENEFITS DUE, OR ANY PROCEEDS THEREOF, NOT OTHERWISE PROVIDED FOR UNDER LAW, UP TO THREE THOUSAND DOLLARS PER MONTH. ANY CLAIM OR PROCEEDS IN EXCESS OF THIS AMOUNT SHALL BE SUBJECT TO GARNISHMENT IN ACCORDANCE WITH SECTION 13-54-104.

SECTION 4. 13-54-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-54-102. Property exempt. (5) (a) AS PROVIDED IN THE EXCEPTION CONTAINED IN 11 U.S.C. SEC. 522 (f) (3), AS AMENDED, A DEBTOR SHALL NOT AVOID A CONSENSUAL LIEN ON PROPERTY OTHERWISE ELIGIBLE TO BE CLAIMED AS EXEMPT PROPERTY.

(b) AS USED IN THIS SUBSECTION (5), UNLESS THE CONTEXT OTHERWISE REQUIRES, "CONSENSUAL LIEN" MEANS A LIEN ON PROPERTY GRANTED WITH THE CONSENT AND APPROVAL OF THE OWNER.

SECTION 5. 13-54-104 (2), Colorado Revised Statutes, is amended to read:

13-54-104. Restrictions on garnishment and levy under execution or attachment. (2) (a) Except as provided in subsection (3) of this section, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment or levy under execution or attachment may not exceed:

(I) For debts other than debts under subparagraph (II) of this paragraph (a), THE LESSER OF:

(A) Twenty-five percent of the individual's disposable earnings for that week; or

(B) The amount by which the individual's disposable earnings for that week

exceed thirty times the federal minimum hourly wage prescribed by section 206 (a) (1) of title 29 of the United States Code in effect at the time the earnings are payable; ~~whichever is less~~; OR

(C) THE AMOUNT BY WHICH THE INDIVIDUAL'S DISPOSABLE EARNINGS FOR THAT WEEK EXCEED THIRTY TIMES THE STATE MINIMUM HOURLY WAGE PURSUANT TO SECTION 15 OF ARTICLE XVIII OF THE STATE CONSTITUTION IN EFFECT AT THE TIME THE EARNINGS ARE PAYABLE;

(II) For debts for fraudulently obtained public assistance or fraudulently obtained overpayments collected pursuant to section 26-2-128 (1) (a), C.R.S., THE LESSER OF:

(A) Thirty-five percent of the individual's disposable earnings for that week; or

(B) The amount by which the individual's disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a)(1) of title 29 of the United States Code in effect at the time the earnings are payable; ~~whichever is less~~. OR

(C) THE AMOUNT BY WHICH THE INDIVIDUAL'S DISPOSABLE EARNINGS FOR THAT WEEK EXCEED THIRTY TIMES THE STATE MINIMUM HOURLY WAGE PURSUANT TO SECTION 15 OF ARTICLE XVIII OF THE STATE CONSTITUTION IN EFFECT AT THE TIME THE EARNINGS ARE PAYABLE.

(b) In the case of earnings for any pay period other than a week, a multiple of the federal minimum hourly wage OR THE STATE MINIMUM HOURLY WAGE, equivalent in effect to that set forth in paragraph (a) of this subsection (2) ~~as prescribed by the secretary of labor of the United States~~ shall be used.

SECTION 6. 5-5-106 (2), Colorado Revised Statutes, is amended to read:

5-5-106. Limitation on garnishment - definitions. (2) (a) The maximum part of the aggregate disposable earnings of an individual for any work week that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of:

~~(a)~~ (I) Twenty-five percent of the individual's disposable earnings for that week; or

~~(b)~~ (II) The amount by which the individual's disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a) (1) of the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., in effect at the time the earnings are payable; OR

(III) THE AMOUNT BY WHICH THE INDIVIDUAL'S DISPOSABLE EARNINGS FOR THAT WEEK EXCEED THIRTY TIMES THE STATE MINIMUM HOURLY WAGE PURSUANT TO SECTION 15 OF ARTICLE XVIII OF THE STATE CONSTITUTION IN EFFECT AT THE TIME THE EARNINGS ARE PAYABLE.

~~(c)~~ (b) In the case of earnings for a pay period other than a week, the administrator may prescribe by rule a multiple of the federal minimum hourly wage

OR THE STATE MINIMUM HOURLY WAGE, equivalent in effect to that set forth in paragraph (b) SUBPARAGRAPHS (II) OR (III) OF PARAGRAPH (a) of this subsection (2).

SECTION 7. 38-41-201, Colorado Revised Statutes, is amended to read:

38-41-201. Homestead exemption. (1) Every homestead in the state of Colorado ~~occupied as a home by the owner thereof or his or her family~~ shall be exempt from execution and attachment arising from any debt, contract, or civil obligation not exceeding ~~in value the sum of forty-five thousand dollars~~ in actual cash value in excess of any liens or encumbrances on the homesteaded property in existence at the time of any levy of execution thereon:

(a) THE SUM OF SIXTY THOUSAND DOLLARS IF THE HOMESTEAD IS OCCUPIED AS A HOME BY AN OWNER THEREOF OR AN OWNER'S FAMILY; OR

(b) THE SUM OF NINETY THOUSAND DOLLARS IF THE HOMESTEAD IS OCCUPIED AS A HOME BY AN ELDERLY OR DISABLED OWNER, AN ELDERLY OR DISABLED SPOUSE OF AN OWNER, OR AN ELDERLY OR DISABLED DEPENDENT OF AN OWNER.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DISABLED OWNER", "DISABLED SPOUSE", OR "DISABLED DEPENDENT" MEANS AN OWNER, SPOUSE, OR DEPENDENT WHO HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT IS DISABLING AND THAT, BECAUSE OF OTHER FACTORS SUCH AS AGE, TRAINING, EXPERIENCE, OR SOCIAL SETTING, SUBSTANTIALLY PRECLUDES THE OWNER, SPOUSE, OR DEPENDENT FROM ENGAGING IN A USEFUL OCCUPATION, AS A HOMEMAKER, A WAGE-EARNER, OR A SELF-EMPLOYED PERSON IN ANY EMPLOYMENT THAT EXISTS IN THE COMMUNITY AND FOR WHICH HE OR SHE HAS COMPETENCE.

(b) "ELDERLY OWNER", "ELDERLY SPOUSE", OR "ELDERLY DEPENDENT" MEANS AN OWNER, SPOUSE, OR DEPENDENT WHO IS SIXTY YEARS OF AGE OR OLDER.

SECTION 8. 38-41-207, Colorado Revised Statutes, is amended to read:

38-41-207. Proceeds exempt - bona fide purchaser. The proceeds from the exempt amount under this part 2, in the event the property is sold by the owner, or the proceeds from such sale under section 38-41-206 paid to the owner of the property or person entitled to the homestead shall be exempt from execution or attachment for a period of ~~one year~~ TWO YEARS after such sale if the person entitled to such exemption keeps the exempted proceeds separate and apart from other moneys so that the same may be always identified. If the person receiving such proceeds uses said proceeds in the acquisition of other property for a home, there shall be carried over to the new property the same homestead exemption to which the owner was entitled on the property sold. Such homestead exemption shall not be valid as against one entitled to a vendor's lien or the holder of a purchase money mortgage against said new property.

SECTION 9. 8-42-124 (1), Colorado Revised Statutes, is amended to read:

8-42-124. Assignability and exemption of claims - payment to employers - when. (1) Except for amounts due under court-ordered support or for a judgment

for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible, claims for compensation or benefits due, OR ANY PROCEEDS THEREOF, under articles 40 to 47 of this title shall not be assigned, released, or commuted except as provided in said articles and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

SECTION 10. Effective date. This act shall take effect upon passage; except that sections 5 and 6 of this act shall take effect July 1, 2007.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 14, 2007