

NOTE: The governor signed this measure on 6/5/2015.

An Act

SENATE BILL 15-283

BY SENATOR(S) Woods, Johnston, Baumgardner, Crowder, Grantham, Hill, Holbert, Lambert, Lundberg, Marble, Neville T., Roberts, Scheffel, Scott;
also REPRESENTATIVE(S) Lee, Kagan.

CONCERNING DEBT COLLECTION PROCEEDINGS, AND, IN CONNECTION THEREWITH, INCREASING THE SCOPE AND VALUE OF ASSETS THAT MAY BE EXEMPTED, CLARIFYING DEFINITIONS OF "EARNINGS", AND SPECIFYING THE PROCEDURE FOR SERVICE OF NOTICE OF EXEMPTION AND PENDING LEVY IN CERTAIN GARNISHMENT PROCEEDINGS.

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

SECTION 1. In Colorado Revised Statutes, 13-54-101, **repeal** (3) as follows:

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

(3) ~~"Earnings" means wages, salaries, commissions, fees, and all crops, livestock, poultry, dairy products, and agricultural products grown, raised, or produced by any debtor as a result of the personal efforts of a debtor or any dependent of such debtor.~~

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

SECTION 2. In Colorado Revised Statutes, 13-54-102, **amend** (1) (a), (1) (b), (1) (c), (1) (g) (I), (1) (i), (1) (j), (1) (l) (I) (A), and (1) (v); and **add** (1) (l) (IV) as follows:

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

(a) The necessary wearing apparel of the debtor and each dependent to the extent of ~~one thousand five hundred~~ TWO THOUSAND dollars in value;

(b) Watches, jewelry, and articles of adornment of the debtor and each dependent to the extent of two thousand FIVE HUNDRED dollars in value;

(c) The library, family pictures, and school books of the debtor and the debtor's dependents to the extent of ~~one thousand five hundred~~ TWO THOUSAND dollars in value, ~~except that this paragraph (c) shall not apply to~~ NOT INCLUDING any ~~such~~ property constituting all or part of the stock in trade of the debtor;

(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, AND dairy production; and the raising of livestock or poultry; all livestock, poultry, or other animals; ALL CROPS, DAIRY PRODUCTS, AND AGRICULTURAL PRODUCTS GROWN, RAISED, OR PRODUCED; and all tractors, farm implements, trucks used in agricultural operations, harvesting equipment, seed, and agricultural machinery and tools in the aggregate value of fifty thousand dollars.

(i) The stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of ~~any~~ A debtor used and kept for the purpose of carrying on ~~any~~ THE DEBTOR'S PRIMARY gainful occupation in the aggregate value of ~~twenty~~ THIRTY thousand dollars OR USED AND KEPT FOR ANY OTHER GAINFUL OCCUPATION IN THE AGGREGATE VALUE OF TEN 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~~ UP TO TWO motor vehicles or bicycles kept and used by any debtor in the aggregate value of ~~five~~ SEVEN thousand FIVE HUNDRED dollars; or

(II) (A) ~~One or more~~ UP TO TWO motor vehicles OR BICYCLES 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 ~~ten~~ TWELVE thousand FIVE HUNDRED dollars.

(B) (Deleted by amendment, L. 2007, p. 876, § 3, effective May 14, 2007.)

(III) THE EXEMPTION PROVIDED IN THIS PARAGRAPH (j) DOES NOT APPLY TO SNOWMOBILES, ALL-TERRAIN VEHICLES, GOLF CARTS, BOATS OR OTHER WATERCRAFT, TRAVEL TRAILERS, TENT TRAILERS, OR MOTOR HOMES.

(l) (I) (A) The cash surrender value of policies or certificates of life insurance THAT HAVE BEEN OWNED BY A DEBTOR FOR A CONTINUOUS, UNEXPIRED PERIOD OF FORTY-EIGHT MONTHS OR MORE, to the extent of one hundred thousand dollars for writs of attachment or writs of execution issued against the insured; except that there is no exemption for increases in cash value from EXTRAORDINARY moneys contributed to a policy or certificate of life insurance during the forty-eight months prior to the issuance of the writ of attachment or writ of execution; and

(IV) FOR PURPOSES OF THIS PARAGRAPH (l), "EXTRAORDINARY MONEYS" MEANS MONETARY CONTRIBUTIONS OR LOAN PAYMENTS IN EXCESS OF THOSE CONTRACTUALLY REQUIRED UNDER THE POLICY OR CERTIFICATE OF LIFE INSURANCE.

(v) Any claim for public or private disability benefits due, or any proceeds thereof, not otherwise provided for under law, up to ~~three~~ FOUR thousand dollars per month. Any claim or proceeds in excess of this amount ~~shall be~~ IS subject to garnishment in accordance with section 13-54-104.

SECTION 3. In Colorado Revised Statutes, 13-54-104, **amend** (1) (b) (I) (A) and (1) (b) (II) (C) as follows:

13-54-104. Restrictions on garnishment and levy under execution or attachment - definitions. (1) As used in this section, unless

the context otherwise requires:

(b) (I) "Earnings" means:

(A) Compensation paid or payable TO AN INDIVIDUAL EMPLOYEE OR INDEPENDENT CONTRACTOR for personal LABOR OR services; ~~whether denominated as wages, salary, commission, or bonus;~~

(II) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for restitution for the theft, embezzlement, misappropriation, or wrongful conversion of public property, or in the event of a judgment for a willful and intentional violation of fiduciary duties to a public pension plan where the offender or a related party received direct financial gain, "earnings" also means:

(C) ~~Payment to an independent contractor for labor or services;~~ Dividends, severance pay, royalties, monetary gifts, monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office, taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies, interest, trust income, annuities, capital gains, or rents;

SECTION 4. In Colorado Revised Statutes, 13-54.5-101, **amend** (1), (2) (a) (I), and (2) (b) (III) as follows:

13-54.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Continuing garnishment" means any procedure for PAYMENT OF A JUDGMENT DEBT BY withholding ~~the earnings of~~ TO WHICH a judgment debtor ~~for successive pay periods for payment of a judgment debt~~ BECOMES ENTITLED FOR THE DURATION OF THE WRIT OF CONTINUING GARNISHMENT.

(2) (a) "Earnings" means:

(I) Compensation paid or payable TO AN INDIVIDUAL EMPLOYEE OR INDEPENDENT CONTRACTOR for personal LABOR OR services; ~~whether denominated as wages, salary, commission, or bonus;~~

(b) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for restitution for the theft, embezzlement, misappropriation, or wrongful conversion of public property, or in the event of a judgment for a willful and intentional violation of fiduciary duties to a public pension plan where the offender or a related party received direct financial gain, "earnings" also means:

(III) ~~Payment to an independent contractor for labor or services,~~ Dividends, severance pay, royalties, monetary gifts, monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office, taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies, interest, trust income, annuities, capital gains, or rents;

SECTION 5. In Colorado Revised Statutes, 13-54.5-107, **amend** (2) as follows:

13-54.5-107. Service of notice upon judgment debtor. (2) (a) In cases OTHER THAN A CONTINUING GARNISHMENT where the judgment debtor's personal property ~~other than earnings,~~ is subject to garnishment, service of the notice of exemption and pending levy required by section 13-54.5-106 ~~shall~~ MUST be made by ~~delivering a copy of such notice to the judgment debtor personally or by leaving a copy of such notice at the usual abode of the judgment debtor with some member of his or her family over the age of eighteen years. In the event that personal service cannot be made upon the judgment debtor, upon a showing that due diligence has been used to obtain personal service, the court shall order service of such notice of exemption and pending levy to be made, in accordance with section 24-70-106, C.R.S., by publication thereof for a period of fourteen days in some newspaper of general circulation published in the county in which said property was so levied upon or, if there is no such newspaper published in such county, by publication in a newspaper of general circulation in an adjoining county, and the court shall order the clerk of the court in which the judgment was entered to mail a copy of such notice to the judgment debtor at his or her last-known address, postage prepaid. Such notice, with proof of service thereof, and, in the case of publication, an affidavit of publication and an affidavit of the mailing of notice shall be filed with the clerk of the court in which the judgment was entered~~ ONE OF

THE FOLLOWING MEANS:

(I) GIVING THE NOTICE OF EXEMPTION AND PENDING LEVY TO THE JUDGMENT DEBTOR IN PERSON AND OBTAINING A RECEIPT;

(II) PERSONAL SERVICE;

(III) (A) DEPOSITING THE NOTICE IN THE UNITED STATES MAIL, POSTAGE PREPAID AND ADDRESSED TO THE JUDGMENT DEBTOR'S LAST-KNOWN ADDRESS KNOWN TO THE JUDGMENT CREDITOR. A NOTICE SERVED IN THIS MANNER MUST BE SENT EITHER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY REGULAR MAIL SUPPORTED BY AN AFFIDAVIT OF MAILING SWORN AND RETAINED BY THE JUDGMENT CREDITOR.

(B) A NOTICE MAILED AND NOT RETURNED AS UNDELIVERABLE BY THE UNITED STATES POSTAL SERVICE IS PRESUMED TO HAVE BEEN GIVEN ON THE DATE OF MAILING. FOR THE PURPOSES OF THIS SUBSECTION (2), "UNDELIVERABLE" DOES NOT INCLUDE UNCLAIMED OR REFUSED.

(C) IF THE JUDGMENT DEBTOR HAS PROVIDED CONSENT FOR NOTICE BY ELECTRONIC MAIL AS DESCRIBED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a), THE JUDGMENT CREDITOR SHALL ALSO PROVIDE THE NOTICE AS DESCRIBED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a) WHEN USING THE NOTICE PROVISIONS IN THIS SUBPARAGRAPH (III).

(IV) TRANSMITTING THE NOTICE BY ELECTRONIC MAIL, IF THE JUDGMENT DEBTOR HAS PREVIOUSLY CONSENTED TO RECEIVE INFORMATION ABOUT THE DEBT FROM THE JUDGMENT CREDITOR IN ELECTRONIC FORM, TO THE LAST-KNOWN ELECTRONIC MAIL ADDRESS OF THE JUDGMENT DEBTOR ON FILE WITH THE JUDGMENT CREDITOR. A NOTICE SERVED IN THIS MANNER MUST BE SUPPORTED BY AN AFFIDAVIT, EXECUTED UNDER PENALTY OF PERJURY, OF ANY OFFICER, CLERK, OR AGENT OF THE CREDITOR OR THE CREDITOR'S ATTORNEY, AUTHORIZED TO SERVE THE NOTICE OR ELECTRONICALLY TRANSMIT THE NOTICE UNDER THIS SECTION. THE AFFIDAVIT CONSTITUTES PROOF OF NOTICE UNDER THIS SUBPARAGRAPH (IV).

(b) (I) IF SERVICE CAN NOT BE MADE UPON THE JUDGMENT DEBTOR AS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2), AND UPON A SHOWING THAT DUE DILIGENCE HAS BEEN USED TO OBTAIN SERVICE AS SET

FORTHIN PARAGRAPH (a) OF THIS SUBSECTION (2), THE COURT SHALL ORDER SERVICE OF A NOTICE OF EXEMPTION AND PENDING LEVY TO BE MADE BY ONE OF THE FOLLOWING METHODS:

(A) PUBLICATION FOR A PERIOD OF FOURTEEN DAYS IN A NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE COUNTY IN WHICH THE PROPERTY WAS LEVIED UPON; OR

(B) IF THERE IS NO NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE COUNTY IN WHICH THE PROPERTY WAS LEVIED UPON, THEN SERVICE IS MADE BY PUBLICATION FOR A PERIOD OF FOURTEEN DAYS IN A NEWSPAPER OF GENERAL CIRCULATION IN AN ADJOINING COUNTY, AND THE COURT SHALL ORDER THE CLERK OF THE COURT IN WHICH THE JUDGMENT WAS ENTERED TO MAIL A COPY OF THE NOTICE TO THE JUDGMENT DEBTOR AT THE JUDGMENT DEBTOR'S LAST-KNOWN ADDRESS, POSTAGE PREPAID.

(II) A NEWSPAPER USED FOR SERVICE BY PUBLICATION AS SET FORTH IN THIS PARAGRAPH (b) MUST MEET THE REQUIREMENTS SET FORTH IN SECTION 24-70-106, C.R.S.

(III) (A) THE JUDGMENT CREDITOR SHALL FILE WITH THE CLERK OF THE COURT IN WHICH THE JUDGMENT WAS ENTERED A NOTICE OF EXEMPTION AND PENDING LEVY, AS WELL AS PROOF OF SERVICE OF THE NOTICE.

(B) IN THE CASE OF SERVICE BY PUBLICATION, THE JUDGMENT CREDITOR SHALL FILE WITH THE CLERK OF THE COURT IN WHICH THE JUDGMENT WAS ENTERED AN AFFIDAVIT OF PUBLICATION AND AN AFFIDAVIT OF THE MAILING OF THE NOTICE.

SECTION 6. In Colorado Revised Statutes, 38-41-201, **amend** (1) as follows:

38-41-201. Homestead exemption - definitions. (1) Every homestead in the state of Colorado shall be exempt from execution and attachment arising from any debt, contract, or civil obligation not exceeding 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~~ SEVENTY-FIVE 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~~ ONE HUNDRED FIVE 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.

SECTION 7. Effective date. This act takes effect July 1, 2015.

SECTION 8. 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.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO