

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 15-1109.01 Jerry Barry x4341

SENATE BILL 15-283

SENATE SPONSORSHIP

Woods, Johnston

HOUSE SPONSORSHIP

Lee,

Senate Committees
Judiciary

House Committees
Judiciary

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

For property that a judgment debtor may claim as exempt from

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
May 5, 2015

SENATE
3rd Reading Unamended
May 4, 2015

SENATE
2nd Reading Unamended
May 1, 2015

levy and sale, the bill:

- ! Increases the dollar value of certain properties;
- ! Adds crops and dairy products to agricultural assets;
- ! Provides that the exemption for motor vehicles does not apply to certain recreational vehicles;
- ! Establishes a lesser exemption for business property if the business activity is not the debtor's primary occupation; and
- ! Clarifies the calculation of the nonexempt portion of the cash surrender value of life insurance policies.

The bill clarifies definitions of "earnings" to include payments made to independent contractors for labor or services. The bill changes the procedure for service of a notice of exemption and pending levy in certain garnishment proceedings.

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

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

4 **13-54-101. Definitions.** As used in this article, unless the context
5 otherwise requires:

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

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

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

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

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

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

9 (g) (I) Except as otherwise provided in subparagraph (II) of this
10 paragraph (g), in the case of every debtor engaged in agriculture as the
11 debtor's principal occupation, including but not limited to farming,
12 ranching, AND dairy production; ~~and~~ the raising of livestock or poultry;
13 all livestock, poultry, or other animals; ALL CROPS, DAIRY PRODUCTS, AND
14 AGRICULTURAL PRODUCTS GROWN, RAISED, OR PRODUCED; and all
15 tractors, farm implements, trucks used in agricultural operations,
16 harvesting equipment, seed, and agricultural machinery and tools in the
17 aggregate value of fifty thousand dollars.

18 (i) The stock in trade, supplies, fixtures, maps, machines, tools,
19 electronics, equipment, books, and business materials of ~~any~~ A debtor
20 used and kept for the purpose of carrying on ~~any~~ THE DEBTOR'S PRIMARY
21 gainful occupation in the aggregate value of ~~twenty~~ THIRTY thousand
22 dollars OR USED AND KEPT FOR ANY OTHER GAINFUL OCCUPATION IN THE
23 AGGREGATE VALUE OF TEN THOUSAND DOLLARS; except that exempt
24 property described in this paragraph (i) may not also be claimed as
25 exempt pursuant to paragraph (j) of this subsection (1);

26 (j) (I) ~~One or more~~ UPTO TWO motor vehicles or bicycles kept and
27 used by any debtor in the aggregate value of ~~five~~ SEVEN thousand FIVE

1 HUNDRED dollars; or

2 (II) (A) ~~One or more~~ UP TO TWO motor vehicles OR BICYCLES kept
3 and used by any elderly or disabled debtor or by any debtor with an
4 elderly or disabled spouse or dependent, in the aggregate value of ~~ten~~
5 TWELVE thousand FIVE HUNDRED dollars.

6 (B) (Deleted by amendment, L. 2007, p. 876, § 3, effective May
7 14, 2007.)

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

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

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

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

1 13-54-104.

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

4 **13-54-104. Restrictions on garnishment and levy under**
5 **execution or attachment - definitions.** (1) As used in this section,
6 unless the context otherwise requires:

7 (b) (I) "Earnings" means:

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

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

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

25 **SECTION 4.** In Colorado Revised Statutes, 13-54.5-101, **amend**
26 (1), (2) (a) (I), and (2) (b) (III) as follows:

27 **13-54.5-101. Definitions.** As used in this article, unless the

1 context otherwise requires:

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

7 (2) (a) "Earnings" means:

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

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

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

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

27 **13-54.5-107. Service of notice upon judgment debtor.** (2) (a) In

1 cases OTHER THAN A CONTINUING GARNISHMENT where the judgment
2 debtor's personal property ~~other than earnings~~, is subject to garnishment,
3 service of the notice of exemption and pending levy required by section
4 13-54.5-106 shall MUST be made by ~~delivering a copy of such notice to~~
5 ~~the judgment debtor personally or by leaving a copy of such notice at the~~
6 ~~usual abode of the judgment debtor with some member of his or her~~
7 ~~family over the age of eighteen years. In the event that personal service~~
8 ~~cannot be made upon the judgment debtor, upon a showing that due~~
9 ~~diligence has been used to obtain personal service, the court shall order~~
10 ~~service of such notice of exemption and pending levy to be made, in~~
11 ~~accordance with section 24-70-106, C.R.S., by publication thereof for a~~
12 ~~period of fourteen days in some newspaper of general circulation~~
13 ~~published in the county in which said property was so levied upon or, if~~
14 ~~there is no such newspaper published in such county, by publication in a~~
15 ~~newspaper of general circulation in an adjoining county, and the court~~
16 ~~shall order the clerk of the court in which the judgment was entered to~~
17 ~~mail a copy of such notice to the judgment debtor at his or her last-known~~
18 ~~address, postage prepaid. Such notice, with proof of service thereof, and,~~
19 ~~in the case of publication, an affidavit of publication and an affidavit of~~
20 ~~the mailing of notice shall be filed with the clerk of the court in which the~~
21 ~~judgment was entered~~ ONE OF THE FOLLOWING MEANS:

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

24 (II) PERSONAL SERVICE;

25 (III) (A) DEPOSITING THE NOTICE IN THE UNITED STATES MAIL,
26 POSTAGE PREPAID AND ADDRESSED TO THE JUDGMENT DEBTOR'S
27 LAST-KNOWN ADDRESS KNOWN TO THE JUDGMENT CREDITOR. A NOTICE

1 SERVED IN THIS MANNER MUST BE SENT EITHER BY CERTIFIED MAIL,
2 RETURN RECEIPT REQUESTED, OR BY REGULAR MAIL SUPPORTED BY AN
3 AFFIDAVIT OF MAILING SWORN AND RETAINED BY THE JUDGMENT
4 CREDITOR.

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

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

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

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

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

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

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

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

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

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

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

1 **38-41-201. Homestead exemption - definitions.** (1) Every
2 homestead in the state of Colorado shall be exempt from execution and
3 attachment arising from any debt, contract, or civil obligation not
4 exceeding in actual cash value in excess of any liens or encumbrances on
5 the homesteaded property in existence at the time of any levy of execution
6 thereon:

7 (a) The sum of ~~sixty~~ SEVENTY-FIVE thousand dollars if the
8 homestead is occupied as a home by an owner thereof or an owner's
9 family; or

10 (b) The sum of ~~ninety~~ ONE HUNDRED FIVE thousand dollars if the
11 homestead is occupied as a home by an elderly or disabled owner, an
12 elderly or disabled spouse of an owner, or an elderly or disabled
13 dependent of an owner.

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

15 **SECTION 8. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.