

54. Property and Earnings Exempt [Details]

For nature of and procedure for claiming homestead exemption, see part 2 of article 41 of title 38.

Law reviews: For article, "An Overview of Colorado Exemption Laws", see 21 Colo. Law. 1883 (1992).

§ 13-54-101. Definitions

As used in this article, unless the context otherwise requires:

(1) "Debtor" means a person whose property or earnings are subject to attachment, execution, or garnishment.

(2) "Dependent" means a person who receives more than one-half of his support from the debtor.

(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 that exists in the community for which he or she has competence.

(3) Repealed.

(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, exercise equipment, musical instruments, bicycles, sewing machines, toys, and home electronics, including but not limited to cameras, television sets, radios, stereos, computers, facsimile machines, telephones, and other audio and video equipment.

(5) "Value" means the fair market value of any property less the amount of any lien thereon valid as between the owner of the property and the holder of any such lien.

(Amended by 2015 Ch. 301, §1, eff. 7/1/2015. L. 59: p. 529, § 1. CRS 53: § 77-13-1. C.R.S. 1963: § 77-2-1. L. 81: Entire section R&RE, p. 892, § 1, effective July 1. L. 2000: (4) amended, p.715, § 1, effective May 23. L. 2007: (2.5) and (3.5) added and (4) amended, p. 875, § 2, effective May 14. L. 2015: (3) repealed, (SB 15-283), ch. 301, p. 1237, § 1, effective July 1.)

ANNOTATION

Law reviews. For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits; An Update", see 25 Colo. Law. 45 (May 1996).

Movie camera and movie projector are not exempt "household goods" for purposes of a bankruptcy proceedings, but are recreational items. Gen. Fin. Corp. v. Ruppe, 3 B.R. 60 (Bankr. D. Colo. 1980); In re Whitney, 70 B.R. 443 (Bankr. D. Colo. 1987).

Stereo system is household goods. In re Whitney, 70 B.R. 443 (Bankr. D. Colo. 1987).

Applied in In re Hellman, 474 F. Supp. 348 (D. Colo. 1979); Redin v. Fidelity Fin. Servs., 14 B.R. 727 (Bankr. D. Colo. 1981); In re Alvarez, 14 B.R. 940 (Bankr. D. Colo. 1981); In re Ferguson, 15 B.R. 439 (Bankr. D. Colo. 1981); In re Janesofsky, 22 B.R. 973 (Bankr. D. Colo. 1982).

For the legislative declaration contained in the 2007 act enacting subsections (2.5) and (3.5) and amending subsection (4), see section 1 of chapter 226, Session Laws of Colorado 2007.

§ 13-54-102. Property exempt - definitions - repeal

(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 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 two thousand dollars in value, not including any property constituting all or part of the stock in trade of the debtor;

(d) Burial sites, including spaces in mausoleums, to the extent of one site or space for the debtor and each dependent;

(e) The household goods owned and used by the debtor or the debtor's dependents to the extent of three thousand dollars in value;

(f) Provisions and fuel on hand for the use or consumption of the debtor or the debtor's dependents to the extent of six hundred 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, and dairy production; 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.

(II) Only one exemption in the aggregate value of 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).

(h) Except for amounts due under court-ordered support of children or spouse which are subject to the exemption provisions of section 13-54-104, all money received by any person as a pension, compensation, or allowance

for any purpose on account or arising out of the services of such person as a member of the armed forces of the United States in time of war or armed conflict, and whether in the actual possession of the recipient thereof or deposited or loaned by him, and a like exemption to the unremarried widow or widower and the children of such person who receive a pension, compensation, or allowance of any kind from the United States on account or arising out of such service by a deceased member of such armed forces; and when a debtor entitled to exemption under this paragraph (h) dies or leaves his family said exemption shall extend to the dependents of said debtor;

(h.5) The articles of military equipment personally owned by members of the National Guard;

(i) The stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of a debtor used and kept for the purpose of carrying on the debtor's primary gainful occupation in the aggregate value of 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) Up to two motor vehicles or bicycles kept and used by any debtor in the aggregate value of seven thousand five hundred dollars; or

(II)

(A) 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 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.

(k) The library of any debtor who is a professional person, including a minister or priest of any faith, kept and used by the debtor in carrying on his or her profession, in the value of three thousand dollars; except that exemptions with respect to any of the property described in this paragraph (k) may not also be claimed under paragraph (i) of this subsection (1);

(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 two hundred fifty 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

(B) The proceeds of policies or certificates of life insurance paid upon the death of the insured to a designated beneficiary, without limitation as to amount, for writs of attachment or writs of execution issued against the insured.

(II) The provisions of this paragraph (I) shall not be interpreted to provide an exemption for attachment or execution of the proceeds of any policy or certificate of life insurance to pay the debts of a beneficiary of such policy or certificate.

(III) The provisions of this paragraph (I) shall not provide an exemption for attachment or execution of the proceeds of any policy or certificate of life insurance if the beneficiary of such policy or certificate is the estate of the insured.

(IV) For purposes of this paragraph (I), "extraordinary moneys" means monetary contributions or loan payments in excess of those contractually required under the policy or certificate of life insurance.

(m) The proceeds of any claim for loss, destruction, or damage and the avails of any fire or casualty insurance payable because of loss, destruction, or damage to any property which would have been exempt under this article to the extent of the exemptions incident to such property;

(n) The proceeds of any claim for damages for personal injuries suffered by any debtor except for obligations incurred for treatment of any kind for such injuries or collection of such damages;

(o) The full amount of any federal or state income tax refund attributed to an earned income tax credit or a child tax credit;

(p) Professionally prescribed health aids for the debtor or a dependent of the debtor;

(q) The debtor's right to receive, or property that is traceable to, an award under a crime victim's reparation law;

(r) For purposes of garnishment proceedings pursuant to article 54.5 of this title 13, any amount held by a third party as a security deposit, as defined in section 38-12-102 (6), or any amount held by a third party as a utility deposit to secure payment for utility goods or services used or consumed by the debtor or the debtor's dependents;

(s) Property, including funds, held in or payable from any pension or retirement plan or deferred compensation plan, including those in which the debtor has received benefits or payments, has the present right to receive benefits or payments, or has the right to receive benefits or payments in the future and including pensions or plans which qualify under the federal "Employee Retirement Income Security Act of 1974", as amended, as an employee pension benefit plan, as defined in 29 U.S.C. sec. 1002, any individual retirement account, as defined in 26 U.S.C. sec. 408, any Roth individual retirement account, as defined in 26 U.S.C. sec. 408A, and any plan, as defined in 26 U.S.C. sec. 401, and as these plans may be amended from time to time;

(t) All property which is subject to a judgment against a debtor for failure to pay state income tax to a state for periods when such individual was not a resident of such state on benefits received from a pension or other retirement plan;

(u) Any court-ordered domestic support obligation or payment, including a maintenance obligation or payment or a child support obligation or payment, if the child support obligation or payment meets the requirements of section 13-54-102.5;

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

(w)

(I) Through June 1, 2021, up to four thousand dollars cumulative in a depository account or accounts in the name of the debtor.

(II) This subsection (1)(w) is repealed, effective September 1, 2022.

(2) Notwithstanding the provisions of paragraph (h) of subsection (1) of this section and section 13-54-104, military pensions shall be subject to court-ordered support of children or spouse.

(3) Notwithstanding the provisions of paragraph (s) of subsection (1) of this section, any pension or retirement benefit or payment shall be subject to attachment or levy in satisfaction of a judgment taken for arrearages for child support or for child support debt, subject to the limitations contained in section 13-54-104.

(4) Notwithstanding anything to the contrary in this section, all property of a person who has committed a felonious killing, as defined in section 15-11-803(1)(b), C.R.S., and as determined in the manner described in section 15-11-803(7), C.R.S., shall be subject to attachment or levy in satisfaction of a judgment awarded pursuant to section 13-21-201 or section 13-21-202 for such felonious killing.

(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.

(Amended by 2021 Ch. 349, §5, eff. 10/1/2021. Amended by 2021 Ch. 7, §2, eff. 1/21/2021. Amended by 2020 Ch. 140, §3, eff. 6/29/2020. Amended by 2017 Ch. 57, §1, eff. 9/1/2017. Amended by 2015 Ch. 301, §2, eff. 7/1/2015. L. 59: p. 530, § 2. CRS 53: § 77-13-2. C.R.S. 1963: § 77-2-2. L. 73: pp. 236, 915, 916, §§ 15, 1, 3. L. 75: (1)(o)(II) amended, p. 1466, § 6, effective July 18. L. 77: (1)(h) amended and (1.1) added, p. 811, § 1, effective July 1. L. 81: Entire section R&RE, p. 893, § 2, effective July 1. L. 84: (1)(r) added, p. 475, § 2, effective January 1, 1985. L. 85: (1)(j) amended, p. 580, § 1, effective April 30. L. 91: (1)(s) and (3) added, p. 383, §§ 1, 2, effective May 1. L. 92: (1)(t) added, p. 2241, § 1, effective June 6. L. 94: (1)(u) added, p. 1210, § 1, effective May 22. L. 95: (1)(l) amended, p. 723, § 1, effective July 1. L. 96: (4) added, p. 50, § 2, effective July 1. L. 2000: (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j)(I), (1)(j)(II)(A), (1)(k), and (1)(o) amended, p. 715, § 2, effective May 23. L. 2002: (1)(h.5) added, p. 587, § 11, effective May 24; (1)(s) amended, p. 487, § 1, effective May 24; (1)(g) amended, p. 1862, § 1, effective July 1; (1)(l)(I)(A) amended, p. 641, § 1, effective August 7. L. 2007: (1)(b), (1)(g), (1)(i), (1)(j), (1)(o), and (1)(u) amended and (1)(v) and (5) added, pp. 876, 877, §§ 3, 4, effective May 14; (1)(s) amended, p. 2026, § 27, effective June 1. L. 2010: (1)(l)(I)(A) amended, (SB 10-147), ch. 147, p. 507, §1, effective September 1. L. 2015: (1)(a), (1)(b), (1)(c), (1)(g)(I), (1)(i), (1)(j), (1)(l)(I)(A), and (1)(v) amended and (1)(l)(IV) added, (SB 15-283), ch. 301,

p. 1237, § 2, effective July 1. L. 2017: (1)(l)(I)(A) amended, (HB 17-1093), ch. 57, p. 180, § 1, effective September 1.)

Section 5 of chapter 140 (SB 20-211), Session Laws of Colorado 2020, provides that section 3 of the act changing this section applies to writs of garnishment, attachment, or execution ordered on or after June 29, 2020.

2021 Ch. 349, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Widow's Allowance", see 6 Dicta 11 (1929). For article, "Some Phases of the Exemption Laws", see 12 Dicta 107 (1935). For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For note, "The Landlord's Lien in Colorado", see 27 Dicta 447 (1950). For note, "A Discussion of Garnishment and Its Exemptions", see 27 Dicta 453 (1950). For article, "Commercial Law", see 59 Den. L.J. 227 (1982). For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For article, "Secured Transactions -- Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983). For article, "Exempting Retirement Benefits from Bankruptcy in Colorado", see 18 Colo. Law. 17 (1989). For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991). For article, "Recent Changes to Military Retirement Division in Divorce", see 47 Colo. Law. 34 (Apr. 2018).

Annotator's note. Since § 13-54-102 is similar to repealed CSA, C. 93, § 14, and laws antecedent thereto, relevant cases construing these provisions have been included in the annotations to § 13-54-102.

Constitutionality. This section does not violate the uniformity clause of § 8 of art. VIII, U.S. Const., or the supremacy clause, art. VI, cl. 2, U.S. Const. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

On its face this section clearly applies to all writs of execution, regardless of underlying claim. Packard v. Packard, 33 Colo. App. 308, 519 P.2d 1221 (1974).

The only exception is specified in §13-54-103, which denies exemptions if the writ of execution issues on a judgment for the purchase price of the property exempted. Packard v. Packard, 33 Colo. App. 308, 519 P.2d 1221 (1974).

The purpose of exemption is to preserve to the debtor his means of support. *Watson v. Lederer*, 11 Colo. 577, 19 P. 602 (1888); *Smith v. Pueblo Mercantile & Credit Ass'n*, 82 Colo. 364, 260 P. 109 (1927).

And to preserve the home for the family. Repeated decisions are to the effect that the purpose of these statutes is to preserve the home for the family, and, to that end, to protect it from alienation by one spouse without the concurrence of the other, and also from execution or attachment arising from any debt, contract, or civil obligation. *In re Youngstrom*, 153 F. 98 (8th Cir. 1907).

Exemptions are to be liberally construed. The exemption laws of the state are for the benefit of residents, and they are to be liberally construed. *Sandberg v. Borstadt*, 48 Colo. 96, 109 P. 419 (1910).

As indicated in the constitution. The liberal policy of this state in regard to exemption laws is indicated by the organic law. Section 1 of art. XVIII, Colo. Const., expressly declares that "the general assembly shall pass liberal homestead and exemption laws". The decisions of the courts should be in harmony with this policy. *Martin v. Bond*, 14 Colo. 466, 24 P. 326 (1890); *Hawkins v. Mosher*, 8 Colo. App. 31, 44 P. 763 (1896).

Exemptions provided by this section for the purposes intended are favored. A perversion of the statute to admit of fraudulent purposes should be avoided by the courts; however, a construction so strict as to defeat its purpose and design should not prevail. *Penrose v. Stevens*, 100 Colo. 83, 65 P.2d 697 (1937).

This section relates solely to civil actions. *Enderman v. Alexander*, 68 Colo. 110, 187 P. 729 (1920).

The statutory right to an exemption is personal and individual, and must be exercised in relation to the property of the individual claiming it. *McCrimmon v. Linton*, 4 Colo. App. 420, 36 P. 300 (1894).

Right cannot be exercised in respect to partnership property. *McCrimmon v. Linton*, 4 Colo. App. 420, 36 P. 300 (1894).

Exemptions apply to the estate of a mental incompetent. The exemption provisions of this section are applicable to the assets in the estate of a mental incompetent, and insurance proceeds in such an estate are exempt from an approved claim of the Colorado state hospital. *State v. Estate of Butler*, 30 Colo. App. 246, 491 P. 2d 102 (1971).

Benefits received by individuals at state mental hospital from veterans administration and the Colorado old age pension

program may be applied to cover costs of care at the hospital under former § 27-12-104 and therefore are not exempt under this section. In re Estate of Nau, 183 P.3d 626 (Colo. App. 2007).

While property may be exempt from levy, there is no statute which exempts it from liens. Noxon v. Glaze, 11 Colo. App. 503, 53 P. 827 (1898).

Exemption can be claimed only from levy and sale upon execution or attachment. As the common-law process of distress for rent does not exist in this state, it is only from levy and sale upon execution or attachment that exemption can be claimed. Replevin on the ground of exemption will lie only where property has been seized by execution or attachment. The statute exempting property from levy does not exempt it from a landlord's lien. Noxon v. Glaze, 11 Colo. App. 503, 53 P. 827 (1898).

Cognovit waiving exemptions is invalid. Colorado has held that a stipulation in a cognovit note which waived the right of exemption was invalid as against public policy. In re Rade, 205 F. Supp. 336 (D. Colo. 1962).

General waiver. A general waiver of "any and all exemptions permitted by law" in a promissory note is invalid as against public policy. Beneficial Fin. Co. of Colo. v. Schmuhl, 713 P.2d 1294 (Colo. 1986).

Implied waiver. Combined note and security agreement result in an implied waiver of \$6000 residential mobile home exemption. Beneficial Fin. Co. of Colo. v. Schmuhl, 713 P.2d 1294 (Colo. 1986).

An ordinary chattel mortgage given on property which is later claimed as exempt will prevail over the exemption. In re Rade, 205 F. Supp. 336 (D. Colo. 1962).

Exemption applicable to judgment for arrearages in child support and alimony. The exemption from levy under writ of execution set forth in subsection (1)(j) applies to a judgment for arrearages in child support and alimony. Packard v. Packard, 33 Colo. App. 308, 519 P.2d 1221 (1974).

The exemption would apply only to the debtor's equity. When mortgaged property is claimed as exempt by a bankrupt, the exemption applies to the equity and not to the specific items of property. In re Cummings, 413 F.2d 1281 (10th Cir. 1969), cert. denied, Sears, Roebuck & Co. v. Horton, 397 U.S. 915, 90 S. Ct. 918, 25 L. Ed. 2d 95 (1970); Centennial Savings & Loan Ass'n v. Schmuhl, 690 P.2d 882 (Colo. App. 1984), rev'd on other grounds sub nom. Beneficial Fin. Co. of Colo. v. Schmuhl, 713 P.2d 1294 (Colo. 1986); In re Holcomb, 54 B.R. 59 (Bankr. D. Colo. 1985).

Vendor's assignee cannot resort to exempt property to satisfy judgment. If the vendor takes a promissory note for the property sold, and transfers the note to a third party, such voluntary transfer of the note does not carry with it to the assignee the right to resort to exempt property to satisfy a judgment which he as assignee may recover upon the note. Whether the heir or personal representative of a deceased vendor would succeed to the privilege of his decedent under the proviso statute was not involved in the controversy in *Weil v. Nevitt*, 18 Colo. 10, 31 P. 487 (1892).

Garnishment of former spouse's pension as indemnification for tax liability is not precluded by subsection (1)(s) exempting pension funds from levy and sale under writ of attachment or execution in "any action" brought after a specified date where relevant action was dissolution, not motion to compel payment of tax. In re *Plank*, 881 P.2d 486 (Colo. App. 1994).

Applied in *First Nat'l Bank v. District Court*, 652 P.2d 613 (Colo. 1982).

II. EXEMPT PROPERTY.

A. In General.

The application of the amended Colorado exemption limits set forth in this section to a loan and security agreement that was entered into prior to the enactment of the amended exemption statute does not constitute a "retrospective" application of state law in violation of art. II, § 11, of the Colorado Constitution and §2-4-202. In re *Larsen*, 260 B.R. 174 (Bankr. D. Colo. 2001).

The application also does not constitute an unconstitutional "taking" of the loan collateral under the fifth amendment to the United States Constitution and the Constitution of the state of Colorado. In re *Larsen*, 260 B.R. 174 (Bankr. D. Colo. 2001).

The application also does not violate the respective "contracts" clauses of the United States and Colorado Constitutions. In re *Larsen*, 260 B.R. 174 (Bankr. D. Colo. 2001).

Notwithstanding the exemption created by subsection (1)(a), public policy prevents the application of an attorney's charging lien against funds owing to a parent as child support. In re *Etcheverry*, 921 P.2d 82 (Colo. App. 1996).

Wife is not a "single person" within meaning of this section and she is not entitled to any claims for exemption as a "single person". In re *Hellman*, 474 F. Supp. 348 (D. Colo. 1979).

Where husband and wife file separately for bankruptcy, both the husband and the wife are entitled to the exemptions provided in paragraphs (c) and (e) of subsection (1). In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

Subsection (1)(f) permits but one claim for exemption and where the trustee had allowed that claim in the computation of the assets available for the creditors of the husband, the wife's claim for a similar exemption was disallowed. In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

Debtor may claim exemptions under subsection (1)(g) and (1)(i) on the same property. In re Case, 66 B.R. 44 (Bankr. D. Colo. 1986); In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

And each debtor can claim the full amount of the exemption under both subsection (1)(g) and (1)(i) as these are personal exemptions belonging to each debtor on personalty. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

"Implements" are defined in Anderson's Law Dictionary to be: "Things necessary to any trade, without which the work cannot be performed". Eckman v. Poor, 38 Colo. 200, 87 P. 1088 (1906).

Damages for personal injuries includes damages recovered in actions for breach of warranty, fraud, deceit, or false imprisonment as well as damages for loss of consortium. In re Keyworth, 47 B.R. 966 (Bankr. D. Colo. 1985).

But excludes damages under the "Wrongful Death Act" unless the claim was for damages for personal injury suffered by the debtor and punitive damages since they are awarded not because of personal injury but because of malicious, wanton, and reckless actions. In re Keyworth, 47 B.R. 966 (Bankr. D. Colo. 1985).

The exemption for damages for personal injury does not apply to punitive damages that are awarded to punish the wrongdoer and not to compensate the plaintiff for injury. Miller v. Accelerated Bureau of Collections, Inc., 932 P.2d 824 (Colo. App. 1996).

Subsection (1)(n) does not protect the net proceeds of a personal injury judgment from garnishment for child support obligation. The plain language of §13-54-106 clearly permits the garnishment of otherwise exempt property or income for the collection of child support arrearages. Drachmeister v. Brassart, 93 P.3d 566 (Colo. App. 2004).

Subsection (1)(o)(II) exemption for mobile home. Under subsection (1)(o)(II), each debtor in a joint case in bankruptcy is entitled to an exemption for a mobile home used as a place of residence and of which each debtor is an owner. *In re Janesofsky*, 22 B.R. 973 (Bankr. D. Colo. 1982).

Moneys from federally guaranteed student loan in student's bank account are exempt from garnishment for judgment based on antecedent business debt owed by student. *Schaerrer v. Westman Comm'n Co.*, 769 P.2d 1058 (Colo. 1989).

Funds of defendant were not exempt from garnishment even though those funds were derived from a federal court order requiring defendant to make restitution as a part of a criminal case. *Newburn v. RFB Petroleum, Inc.*, 775 P.2d 93 (Colo. App. 1989).

Where a non-custodial parent owes a duty of child support, such parent may not offset that obligation against a personal judgment that the non-custodial parent may have against the custodial parent. *Hall v. Hall-Stradley*, 776 P.2d 1166 (Colo. App. 1989).

Exemption for jewelry was denied where debtor failed to provide court with current market value of specific items. *In re Raymond*, 132 B.R. 53 (Bankr. D. Colo. 1991).

Debtor's annuity was not a life insurance policy for purposes of exemption under subsection (1)(l). *In re Raymond*, 132 B.R. 53 (Bankr. D. Colo. 1991).

Because the statute has no restrictive conditions, the term "avails" in subsection (1)(l) includes the cash surrender value of life insurance policies. *In re Griese*, 172 B.R. 336 (Bankr. D. Colo. 1994) (decided prior to 1995 amendment to subsection (1)(l)).

An adoption expense credit is not an earned income tax credit and, therefore, does not qualify as exempt property under subsection (1)(o). Earned income is not an element of eligibility for the adoption expense credit. Subsection (1)(o) refers to the very unique tax credit program that is based upon earned income. It does not create a generic exemption for all tax credits that use income as a qualifying factor. *In re Walsh*, 298 B.R. 894 (Bankr. D. Colo. 2003).

Attorney's charging lien may attach to an award of spousal maintenance. Because the language of the attorney's lien statute is unambiguous, the levy exception for maintenance payments in this section

is irrelevant to whether such payments fall within the scope of § 12-5-119. Samuel J. Storman & Assocs. v. Dixon, 2017 CO 42, 394 P.3d 691.

B. Agriculture.

Debtors engaged in agriculture as their principal occupation **where** they began trucking to save their farming business, a business that had been a way of life for each of them and for at least three generations for each of their families; they began trucking with reluctance; debtor wife steadfastly resisted driving a truck but finally did so only as a last resort to save the farming business; it is fairly common for farmers and ranchers in the area to take on employment outside of the family farm for at least part of the year in order to supplement farm income and pay bills; most, if not all, of the income from trucking was dedicated to paying the bills related to the family and its farming and ranching business; both debtors expressed a credible and sincere intent to return to working full-time as farmers/ranchers once they were able to get back on their feet financially; and, while they drove trucks approximately 40 hours per week, they and their children also continued to raise cattle and manage the farm in their spare time. The debtors can, therefore, claim exemptions under subsection (1)(g). In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

Debtors' remaining livestock are in the nature of breeding stock, without which it would be virtually impossible for debtors to obtain a fresh start. The stock is therefore exempt from levy as "tools of the trade" under subsection (1)(g). In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

C. Household Goods.

Ownership interest required before exemption may be claimed. Each Colorado debtor in a joint case is entitled to claim up to \$1,500 a piece in household goods or tools of trade; however, the debtor must have an ownership interest in the property before any exemption may be claimed. In re Ferguson, 15 B.R. 439 (Bankr. D. Colo. 1981); In re Reeder, 60 B.R. 312 (Bankr. D. Colo. 1986).

Where husband and wife are two separate debtors in a joint petition in bankruptcy, under subsection (1)(e), each is entitled to claim a \$1,500 exemption for a total exemption of \$3,000 for household goods. In re Alvarez, 14 B.R. 940 (Bankr. D. Colo. 1981).

Where husband and wife file separately for bankruptcy, both the husband and the wife are entitled to the exemptions provided in paragraphs

(c) and (e) of subsection (1). In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

Subsection (1)(e) exemption superior to nonpossessory, nonpurchase money security interest. A nonpossessory, nonpurchase money security interest in debtors' household goods and household furnishings under § 522 (f) of the federal bankruptcy code, is void to the extent that it impairs the exemption to which the debtors would be entitled under subsection (1)(e) if no security interest existed. Redin v. Fidelity Fin. Servs., 14 B.R. 727 (Bankr. D. Colo. 1981); In re Weiss, 51 B.R. 224 (Bankr. D. Colo. 1985).

Guns do not constitute household goods when primarily used as recreational items. In re Greenlee, 61 B.R. 257 (Bankr. D. Colo. 1986).

Tractor qualified as a household good because it was necessary to the functioning of the household. In re Sarmiento, 363 B.R. 189 (Bankr. D. Colo. 2006).

D. Stock in Trade.

Debtor may claim exemptions under subsection (1)(g) and (1)(i) on the same property. In re Case, 66 B.R. 44 (Bankr. D. Colo. 1986); In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

And each debtor can claim the full amount of the exemption under both subsection (1)(g) and (1)(i) as these are personal exemptions belonging to each debtor on personalty. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

Debtor may claim an exemption for "tools of the trade" in his personal bankruptcy when the debtor conducts his business operations through a wholly owned corporation. In re Calderon, 501 B.R. 726 (Bankr. D. Colo. 2013).

The tools are owned by debtor in his individual capacity and are used and kept by him for purposes of carrying on a gainful occupation, that is, his masonry business. The fact that debtor uses and keeps the tools in relation to work performed through his wholly owned corporation, in itself, does not affect debtor's right to a personal exemption under §13-54-107. In re Calderon, 501 B.R. 726 (Bankr. D. Colo. 2013).

The words "stock in trade", in subsection (1)(i), apply to the merchant or shopkeeper, as well as to the mechanic, and include the stock of goods kept on sale by the merchant. Weil v. Nevitt, 18 Colo. 10, 31 P. 487 (1892).

Therefore it includes liquors of a saloonkeeper. Weil v. Nevitt, 18 Colo. 10, 31 P. 487 (1892).

Debtors may claim exemptions under subsection (1)(i) where evidence demonstrated that equipment was not only used by the debtors in their farming and ranching operations but was an integral part of those operations. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

The phrase "gainful occupation" requires at least some aspect of profitability. In re Sharp, 508 B.R. 457 (10th Cir. 2014).

In order to disqualify a debtor's claimed tools of trade exemption, the objecting party must prove by a preponderance of the evidence that the debtor's occupation is unlikely to contribute to the support of the debtor and the debtor's family in any significant way within a reasonable period of time under the specific facts of each case. In re Sharp, 508 B.R. 457 (10th Cir. 2014).

The phrase "gainful occupation" means the principal work or business for which a person receives compensation or profit, not reimbursement for the role of foster parent. In re Sedillo, 476 B.R. 619 (Bankr. D. Colo. 2012).

Under the plain meaning of subsection (1)(i), debtor's role as a foster parent does not qualify for the claimed exemption of a motor vehicle used by debtor to transport foster children to necessary everyday activities. In re Sedillo, 476 B.R. 619 (Bankr. D. Colo. 2012).

A debtor may claim a motor vehicle as exempt pursuant to subsection (1)(i) so long as the vehicle qualifies for the exemption. In re Van Winkle, 265 B.R. 247 (Bankr. D. Colo. 2002); In re Black, 280 B.R. 258 (Bankr. D. Colo. 2002).

Debtor entitled to claim truck as exempt equipment pursuant to subsection (1)(i) where debtor used and kept the truck for the specific purpose of carrying on debtor's occupation. In re Van Winkle, 265 B.R. 247 (Bankr. D. Colo. 2002).

Debtor entitled to claim motor vehicle under subsection (1)(i) where debtor used the vehicle to carry on a gainful occupation. In re Sackett, 394 B.R. 544 (Bankr. D. Colo. 2008).

Failure to make selection under this section is waiver of right. A defendant in attachment, claiming under subsection (1)(i), of "implements or stock in trade used or kept for the purpose of carrying on his trade or business", not specifically exempt by law, is entitled to select such articles as

are suitable to his trade or business; and a failure on his part to make such selection, is a waiver of his right thereto. *Behymer v. Cook*, 5 Colo. 395 (1880).

Property subject to levy and sale under §13-54-103 cannot become exempt under subsection (1)(i). *Behymer v. Cook*, 5 Colo. 395 (1880).

Exemption for stock in trade cannot exceed statutory limit. The supreme court of Colorado has made statements indicating it would not exempt a tool or instrument, or stock in trade, exceeding the value set by the statute. *Watson v. Lederer*, 11 Colo. 577, 19 P. 602 (1888).

E. Motor Vehicles.

Law reviews. For article, "Exemption of Automobiles from Levy Under Execution or Attachment", see 10 *Dicta* 143 (1933). For note, "The Status of an Automobile Under the Exemption Laws of Colorado", see 10 *Rocky Mt. L. Rev.* 269 (1938).

Subsection (1)(j) provides for an exemption where the debtor uses a motor vehicle for carrying on any gainful occupation. *In re Rade*, 205 F. Supp. 336 (D. Colo. 1962).

Legal title to an automobile is not a requirement of subsection (1)(j)(I). Subsection (1)(j)(I) allows a debtor to exempt one or more motor vehicles kept and used by the debtor. *Hill v. Koching*, 338 B.R. 463 (Bankr. D. Colo. 2005).

Use of vehicle on public highways is not a requirement of subsection (1)(j)(I). *In re Sarmiento*, 363 B.R. 189 (Bankr. D. Colo. 2006).

Debtors entitled to claim tractor as exempt motor vehicle. *In re Sarmiento*, 363 B.R. 189 (Bankr. D. Colo. 2006).

The application of subsection (1)(j)(II)(A) is expressly limited to debtors who are themselves elderly or disabled and not to a debtor who keeps and uses a motor vehicle for the purpose of obtaining medical care for a disabled dependent. *In re Coleman*, 208 B.R. 739 (Bankr. D. Colo. 1997).

Debtor's son's manic-depressive mental condition was not disabling under subsection (1)(j)(II)(A) where there was no evidence or offer of proof of any inability of the son to maintain gainful employment. *In re Coleman*, 208 B.R. 739 (Bankr. D. Colo. 1997).

For evidence supporting ruling that automobile was not exempt, see *Law v. Simon*, 110 Colo. 545, 136 P.2d 520 (1943).

F. Pensions and Retirement Plans.

Subsection (1)(s) applies only to original actions, writs of garnishments, issued by a court on or after May 1, 1991. *Guidry v. Sheet Metal Wkrs. Intern. Ass'n, Local 9*, 10 F.3d 700 (10th Cir. 1993).

And the exemption does not apply in any action for dissolution of marriage in which the petition was filed before May 1, 1991. *In re LeBlanc*, 944 P.2d 686 (Colo. App. 1997).

Plain meaning of "retirement plan" is not limited to plans that possess attributes of ERISA-qualified or tax-qualified plans. A future retirement obligation by company is therefore exempt from attachment or garnishment under subsection (1)(s). *Dillabaugh v. Ellerton*, 259 P.3d 550 (Colo. App. 2011).

Health savings account is not a "retirement plan" as contemplated by subsection (1)(s). The plain meaning of "retirement plan" is a plan intended to provide an income to a person after that person retires from a career. *Comm'l Research, LLC v. Roup*, 2013 COA 163, 353 P.3d 859, *aff'd*, 2015 CO 38, 349 P.3d 273.

Subsection (1)(s) is preempted by the federal Employee Retirement Income Security Act (ERISA) because it imposes limitations not imposed by ERISA on a spouse's right to receive retirement plan funds under a qualified domestic relations order (QDRO). Court may use a QDRO to satisfy husband's unpaid obligations relating to the dissolution of marriage, including those for child support, maintenance, and attorney fees and, doing so, does not violate the anti-alienation provisions of ERISA or the internal revenue code. Further, a QDRO issued for this purpose does not result in an improper modification of the property division provisions of the decree. *In re Drexler*, 2013 COA 43, 315 P.3d 179.

Funds in a savings account that were the balance remaining from a lump-sum distribution from a retirement account are not exempt under subsection (1)(s). *In re Gordon*, 791 F.3d 1182 (10th Cir. 2015).

G. Life Insurance.

Statute exempts from garnishment the "cash surrender value" of a life insurance policy up to \$25,000. In re Gedgaudas, 978 P.2d 677 (Colo. App. 1999).

The exclusion from the exemption is the only garnishable or attachable asset, measured by the incremental increases in "cash value" occasioned by the making of contributions to the policy through payment of premiums. In re Gedgaudas, 978 P.2d 677 (Colo. App. 1999); In re Moosman, 473 B.R. 385 (Bankr. D. Colo. 2012).

If on the date of bankruptcy a debtor's life insurance policy has a cash surrender value equal to or less than the amount debtor's contributions during the prior four years have increased the cash value of the policy, the entire cash surrender value is non-exempt. In re Moosman, 473 B.R. 385 (Bankr. D. Colo. 2012).

H. Income Tax Refund.

The nonrefundable portion of the child tax credit of 26 U.S.C. §24(a) is not exempt property under subsection (1)(o) of this section and therefore is not exempt from a bankruptcy estate because it does not constitute a payment under the internal revenue code and thus cannot give rise to a refund. In re Borgman, 698 F.3d 1255 (10th Cir. 2012).

(1) For specific exemptions for cemetery company property, see §7-47-106; for workers' compensation benefits, see §8-42-124; for employment security benefits, see §8-80-103; for delinquent insurance company assets, see §10-3-556; for group life insurance proceeds, see §10-7-205; for fraternal benefit society insurance benefits, see §10-14-403; for constitutional state officers' fees or salaries, see §13-61-101; for family allowance from estate, see §15-11-403; for public assistance payments, see §26-2-131; for homestead exemptions, see part 2 of article 41 of title 38.

(2) For the legislative declaration contained in the 2007 act amending subsections (1)(b), (1)(g), (1)(i), (1)(j), (1)(o), and (1)(u) and enacting subsections (1)(v) and (5), see section 1 of chapter 226, Session Laws of Colorado 2007. For the legislative declaration in SB 20-211, see section 1 of chapter 140, Session Laws of Colorado 2020.

§ 13-54-102.5. Child support payments - exemption - deposit into custodial account

(1) Any past or present child support obligation owed by a parent or child support payment made by a parent that is required by a support order is exempt from levy under writ of attachment or writ of execution for any debt owed by either parent. A child support payment is no longer exempt under the provisions of this section if the recipient of the payment intermingles the payment with any other moneys.

(2) A child support payment is only exempt under the provisions of subsection (1) of this section after the payment is deposited in a bank, savings and loan, or credit union account if the account is a custodial account for the benefit of the child designated for child support payments and if no moneys other than child support payments made pursuant to a support order or interest earned on the moneys in the account are deposited into the account.

(L. 94: Entire section added, p. 1210, § 2, effective May 22.)

ANNOTATION

Notwithstanding the exemption created by subsection (1), public policy prevents the application of an attorney's charging lien against funds owing to a parent as child support. In re Etcheverry, 921 P.2d 82 (Colo. App. 1996).

Special coordinator appointed to arbitrate during a post-dissolution of marriage proceeding violated this section by requesting that her fees be paid from child support funds deposited in the court registry. Although the coordinator did not employ writs of attachment or execution to obtain payment, coordinator's behavior was functionally equivalent to extracting payment for a parent's debt from a child support payment. In re Eggert, 53 P.3d 794 (Colo. App. 2002).

§ 13-54-103. No exemption for purchase price

None of the property described in section 13-54-102 shall be exempt from levy and sale on writ of attachment or writ of execution for the purchase price of such property.

(L. 59: p. 532, § 3. CRS 53: § 77-13-3. C.R.S. 1963: § 77-2-3.)

ANNOTATION

Annotator's note. Since § 13-54-103 is similar to the repealed second proviso to CSA, C. 13, § 14 and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section is for the protection of the vendor who has parted with his property without getting his pay for it; it is a privilege personal to the vendor. *Weil v. Nevitt*, 18 Colo. 10, 31 P. 487 (1892).

It is analogous to the vendor's lien for purchase price of real estate. The privilege which the statute secures to the vendor would seem to bear a close analogy to the vendor's lien for the purchase price of real estate. *Weil v. Nevitt*, 18 Colo. 10, 31 P. 487 (1892).

No property is exempt from levy to satisfy a claim for the purchase money thereof. *Behymer v. Cook*, 5 Colo. 395 (1880).

This section itself does not create a lien on exempt property. As this section indicates, exempt personal property is subject to levy of attachment for the purchase price thereof. But it has been held that such a statutory provision in itself does not create a lien in exempt property. In *re Rade*, 205 F. Supp. 336 (D. Colo. 1962).

It has been indicated that a favorable attitude towards equitable liens prevails in Colorado. In *re Rade*, 205 F. Supp. 336 (D. Colo. 1962).

Applied in *Packard v. Packard*, 33 Colo. App. 308, 519 P.2d 1221 (1974); In *re Seguin*, 76 B.R. 175 (Bankr. D. Colo. 1987).

**§ 13-54-104. Restrictions on garnishment and levy under
execution or attachment - definitions**

(1) As used in this section, unless the context otherwise requires:

(a) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and after the deduction of the cost of any health insurance provided by the individual pursuant to section 14-14-112 and the cost of any health insurance for the individual or members of the individual's household that is provided by the individual's employer and withheld from the individual's earnings. In the case of an order for the support of a spouse, former spouse, or dependent child, "disposable earnings" includes money voluntarily deposited in tax-deferred compensation funds.

(b)

(I) "Earnings" means:

(A) Compensation paid or payable to an individual employee or independent contractor for personal labor or services;

(B) Funds held in or payable from any health, accident, or disability insurance.

(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:

(A) Workers' compensation benefits;

(B) Any pension or retirement benefits or payments, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and articles 30.5 and 31 of title 31, C.R.S.;

(C) 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;

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(D) Any funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages; and

(E) Tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.

(III) For the purposes of writs of garnishment issued by the state agency responsible for administering the state medical assistance program, which writs are issued as a result of a judgment for medical support for child support or for medical support debt, "earnings" includes:

(A) Payments received from a third party to cover the health care cost of the child but which payments have not been applied to cover the child's health care costs;

(A.5) Unemployment insurance benefits; and

(B) State tax refunds.

(IV) For the purposes of writs of garnishment issued by a county department of human or social services responsible for administering the state public assistance programs, which writs are issued as a result of 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, "earnings" includes workers' compensation benefits.

(V) For the purposes of attachments of earnings or writs of garnishment that are the result of a judgment taken for court assessments including fines, fees, costs, restitution, and surcharges pursuant to section 16-11-101.6 or section 16-18.5-105, C.R.S., "earnings" also means those enumerated under subparagraph (I) of this paragraph (b).

(1.1) Repealed.

(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 that is subjected to garnishment or levy under execution or attachment may not exceed:

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(I) For debts other than debts pursuant to subsection (2)(a)(II) of this section, the lesser of:

(A) Twenty 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 forty times the federal minimum hourly wage prescribed by 29 U.S.C. sec. 206(a)(1) in effect at the time the earnings are payable; or

(C) The amount by which the individual's disposable earnings for that week exceed forty 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;

(D) Notwithstanding the provisions of subsections (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(I)(C) of this section, a judgment debtor may file a written objection pursuant to section 13-54.5-108(1)(a), without the necessity of conferring with the garnishee, and seek a hearing pursuant to section 13-54.5-109(1)(a). At the hearing the judgment debtor may establish that a greater portion of the judgment debtor's disposable earnings should be exempt from garnishment for the support of the judgment debtor or the judgment debtor's family supported, in whole or in part, by the judgment debtor. At such hearing, the court shall, pursuant to section 13-54.5-109(2), determine whether the earnings of the judgment debtor following garnishment, together with any other income received by the judgment debtor's family, are insufficient to pay the actual and necessary living expenses of the judgment debtor or the judgment debtor and judgment debtor's family based upon proof of such expenses incurred during the sixty days prior to the hearing. In making this determination, the living expenses the court must consider include, but are not limited to, the following: Rent or mortgage; utilities; food and household supplies; medical and dental expenses; child care; clothing; education; transportation; and maintenance, alimony, or child support. If the court makes a determination of insufficiency, it shall order that more of the judgment debtor's disposable earnings should be exempt from garnishment than prescribed by subsections (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(I)(C) of this section.

(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

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(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; 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) shall be used.

(3)

(a) The restrictions of subsection (2) of this section do not apply in the case of:

(I) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure which is established by state law, which affords substantial due process, and which is subject to judicial review;

(II) Any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code, the federal bankruptcy code of 1978;

(III) Any debt due for any state or federal tax.

(b)

(I) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment or levy under execution or attachment to enforce any order for the support of any person shall not exceed:

(A) Where such individual is supporting his spouse or dependent child, other than a spouse or child with respect to whose support such order is used, fifty percent of such individual's disposable earnings for that week; and

(B) Where such individual is not supporting a spouse or dependent child as described in sub-subparagraph (A) of this subparagraph (I), sixty percent of such individual's disposable earnings for that week.

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(II) With respect to the disposable earnings of any individual for any workweek, the fifty percent specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (b) shall be deemed to be fifty-five percent, and the sixty percent specified in sub-subparagraph (B) of subparagraph (I) of this paragraph (b) shall be deemed to be sixty-five percent if and to the extent that such earnings are subject to garnishment or wage assignment or income assignment or levy under execution or attachment to enforce a support order with respect to a period that is prior to the twelve-week period that ends with the beginning of such workweek.

(III) Notwithstanding the maximum part of the aggregate disposable earnings of an individual which is subject to garnishment as provided in this paragraph (b), a debtor who is totally and permanently disabled and who establishes that at least seventy-five percent of his income is derived from any disability income or benefits may object to the amount of the aggregate disposable earnings subject to garnishment under this paragraph (b). The court, upon consideration of the circumstances of the parties, may provide for garnishment in an amount less than such maximum amounts.

(4) The restrictions established by this section shall be adhered to whether or not the employer of the debtor is subject to garnishee process.

(Amended by 2019 Ch. 214, §3, eff. 8/2/2019. Amended by 2018 Ch. 38, §9, eff. 8/8/2018. Amended by 2015 Ch. 301, §3, eff. 7/1/2015. L. 59: p. 532, § 4. CRS 53: § 77-13-4. C.R.S. 1963: § 77-2-4. L. 71: p. 853, § 2. L. 79: Entire section R&RE, p. 623, § 1, effective May 31. L. 80: (1)(b) amended, p. 613, § 2, effective April 10; (3)(a)(II) amended, p. 785, § 11, effective June 5. L. 85: (3)(b)(II) amended, p. 590, § 5, effective July 1. L. 87: (1)(b) amended, p. 595, § 22, effective July 10. L. 88: (1.1) added, p. 609, § 1, effective April 14; (3)(b)(III) added, p. 611, § 3, effective July 1. L. 90: (1)(b) amended, p. 564, § 32, effective July 1. L. 91: (1)(b) amended and (1.1) repealed, pp. 383, 384, §§ 3, 4, effective May 1. L. 92: (1)(b) amended, p. 577, § 3, effective July 1; (1)(a) amended, p. 172, § 5, effective August 1. L. 93: (1)(b)(II) amended, p. 1871, § 3, effective June 6. L. 94: (1)(a) and (1)(b)(I)(A) amended, p. 1535, § 2, effective May 31; (1)(b)(II) amended, p. 2048, § 7, effective June 3; (1)(b) amended, p. 1594, § 3, effective July 1; (1)(b)(II) amended, p. 1252, § 4, effective July 1; (2)(a) amended, p. 2061, § 2, effective July 1. L. 96: (1)(b) and (3)(b)(II) amended, p. 590, § 1, effective July 1. L. 98: (1)(b)(II)(B) amended, p. 920 § 5, effective July 1. L. 99: (1)(b)(II)(B) amended, p. 620, § 13, effective August 4. L. 2005: IP(1)(b)(II) and (1)(b)(II)(B) amended, p. 71, § 1, effective August 8. L. 2006: (1)(b)(IV) added, p. 948, § 4, effective August 7. L. 2007: (2) amended, p. 877, § 5, effective July 1. L. 2009: (1)(b)(II)(B) amended, (SB 09-066), ch. 73, p. 259, §23, effective July 1; (1)(b)(II)(B) amended, (SB 09-282), ch. 288, p. 1396, §57, effective January 1, 2010. L. 2012: (1)(b)(V) added, (HB 12-1310), ch. 268, p. 1392, § 2,

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effective June 7. L. 2015: (1)(b)(I)(A) and (1)(b)(II)(C) amended, (SB 15-283), ch. 301, p. 1239, § 3, effective July 1. L. 2018: (1)(b)(IV) amended, (SB 18-092), ch. 38, p. 399, § 9, effective August 8.)

(1) Amendments to subsection (1)(b) by Senate Bill 94-164, Senate Bill 94-088, Senate Bill 94-141, and House Bill 94-1345 were harmonized.

(2) Amendments to subsection (1)(b)(II)(B) by Senate Bill 09-066 and Senate Bill 09-282 were harmonized, effective January 1, 2010.

(3) Section 7(2) of chapter 214 (HB 19-1189), Session Laws of Colorado 2019, provides that the act changing this section applies to all writs of garnishment issued on or after October 1, 2020, or the official declaration of the vote thereon by the governor if sent to a vote of the people, regardless of the dates of entry of the judgments upon which the writs of garnishment are based.

ANNOTATION

Law reviews. For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "An Individual's Retirement Benefits Under the Bankruptcy Code", see 16 Colo. Law. 1211 (1987). For article, "Perils of Pre-Bankruptcy Planning: Transfers, Exemptions and Taxes", see 17 Colo. Law. 1513 (1988). For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988). For article, "Setoff and Security Interests In Deposit Accounts", see 17 Colo. Law. 2108 (1988). For article, "Exempting Retirement Benefits from Bankruptcy in Colorado", see 18 Colo. Law. 17 (1989). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991). For article, "Overcoming Difficulties in Collecting Child Support and Maintenance", see 24 Colo. Law. 2725 (1995).

Annotator's note. Since § 13-54-104 is similar to repealed laws antecedent to CSA, C. 93, § 16, cases construing those provisions have been included in the annotations to this section.

Earnings received do not lose their character as "wages" and become capital. It has been argued with much ingenuity that the earnings of the laborer, when received by him, are no longer wages, but capital; that the exemption statute has performed its office when it has enabled the laborer to secure his wages from his employer without let or hindrance; and that thereafter the statute cannot be invoked in his favor. This section cannot be thus reasoned away. Such a construction is narrow and illiberal. It would compel the laborer to leave his earnings in the hands of his employer, or else forego the protection of the statute altogether. It would not only deprive him

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of the privilege of depositing his earnings with any bank or other depository for safekeeping, but would subject his wages to supplemental proceedings even in his own pocket; for, if earnings once received immediately lose their character as wages, then it is evident that the laborer could never retain his earnings for a single hour without exposing them to the very perils which the statute was designed to avert. Such a construction would practically frustrate the beneficent objects of the statute. *Rutter v. Shumway*, 16 Colo. 95, 26 P. 321 (1891).

Earnings include money received according to the work done. The earnings of defendant were according to the work done, and not according to the length of employment. This fact does not preclude them from being "earnings" within the meaning of the statute. *Stranger v. Harris*, 77 Colo. 340, 236 P. 1001 (1925).

The fact that some capital, and some assistants, enter into the work, does not prevent the income from the contract from being "earnings" within the meaning of our statute. *Stranger v. Harris*, 77 Colo. 340, 236 P. 1001 (1925).

Employee's interest in erstwhile retirement plan is not earnings. Where employee terminated his employment and never did qualify for any pension or retirement benefits, employee's interest in erstwhile employer's retirement plan cannot be considered "earnings". *Fin. Acceptance Co. v. Breaux*, 160 Colo. 510, 419 P.2d 955 (1966).

Shares of common stock debtor purchased through an employee stock purchase plan are not exempt earnings pursuant to this section and §5-5-105. *In re Kramer*, 339 B.R. 761 (Bankr. D. Colo. 2006).

Termination payments held earnings for exempt services. Termination payments which may be paid to the debtor pursuant to an insurance agent's agreement after the filing of his Chapter 7 petition are not payments due him under a covenant not to compete but are earnings for services which are exempt under this section. *In re Marshburn*, 5 B.R. 711 (Bankr. D. Colo. 1980).

The whole spirit of acts such as this section is such that it was intended to protect the exempt property from all manner of coercive process of the law, and not merely to protect the earnings of the debtor and other exempt property from seizure by means of the processes technically known as attachment, execution, or garnishment, but to preserve them for the benefit of his family against any appropriation for the payment of his debts not authorized by law to which he does not consent. *Fin. Acceptance Co. v. Breaux*, 160 Colo. 510, 419 P.2d 955 (1966).

Attorney's fees not deductible before computing percentage of disposable earnings available for garnishment. Rios v. Mireles, 937 P.2d 840 (Colo. App. 1996).

A defendant cannot counterclaim for wages that are exempt. In an action for wages exempt by statute from levy under execution, attachment, or garnishment which are due from a defendant, the defendant cannot counterclaim a debt due from the plaintiff to him. Fin. Acceptance Co. v. Breaux, 160 Colo. 510, 419 P.2d 955 (1966).

Subsection (1.1) held invalid. Since the federal constitution reserves to Congress the right to legislate bankruptcy exemptions, this attempt by the state to create a separate bankruptcy exemption was impermissible. The exemption provided by this subsection was one which served to protect a judgment debtor in bankruptcy but did not protect him from execution and levy. In re Mata, 115 B.R. 288 (Bankr. D. Colo. 1990) (decided prior to 1991 repeal of subsection (1.1)).

Since this subsection makes specific reference to ERISA plans, it is clear that this provision must be considered to have been preempted by the explicit provisions of ERISA. In re Starkey, 116 B.R. 259 (Bankr. D. Colo. 1990) (decided prior to 1991 repeal of subsection (1.1)).

Subsection (2), which limits an exemption in pension plan benefits to 75% of the "avails" of any such plan, is preempted by the ERISA provision which mandates a 100% exemption. In re Starkey, 116 B.R. 259 (Bankr. D. Colo. 1990).

Deferred compensation plans are "earnings" within the meaning of this section and not a "trust". In re Vann, 113 B.R. 704 (Bankr. D. Colo. 1990) (decided prior to 1991 amendment to subsection (1)(b)).

Future commissions based on renewal of insurance policies qualify as "earnings" under subsection (1)(b) because they are "compensation . . . payable for personal services". Therefore, all renewal commissions are "earnings" that would be entitled to the statutory exemption. In re Fuchs, 189 B.R. 811 (Bankr. D. Colo. 1995).

Indebtedness owed to an independent contractor is not earnings, except for the garnishments described in section (1)(b)(II). Idaho Pac. Lumber Co. v. Celestial Land Co., 2013 COA 136, 348 P.3d 950.

Personal injury settlement proceeds do not constitute "earnings" as the term is defined in this section. Therefore, the statutory exemptions

**Colo. Rev. Stat. § 13-54-104 Restrictions on garnishment and
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and methods of computing "disposable earnings" subject to garnishment of earnings do not apply. *People ex rel. J.W.*, 174 P.3d 315 (Colo. App. 2007).

Applicability of exemption. The exemption provided for in this section only applies to that portion of a pension or profit sharing plan that is interest or income and not to the corpus of such plan. *In re Toner*, 105 B.R. 978 (Bankr. D. Colo. 1989); *In re Alagna*, 107 B.R. 301 (Bankr. D. Colo. 1989).

The exemption in this section does not apply in an action for dissolution of marriage commenced by petition before May 1, 1991. *In re LeBlanc*, 944 P.2d 686 (Colo. App. 1997).

Preemption of section. This section is preempted with respect to ERISA qualified pensions or plans. *In re Alagna*, 107 B.R. 301 (Bankr. D. Colo. 1989).

Debtors are permitted under the Bankruptcy Code and this section to exempt 75% of the entire balance of their IRA's from the bankruptcy estate. *In re Kulp*, 949 F.2d 1106 (10th Cir. 1991).

Wages paid to subcontractor do not lose characterization of "earnings" by virtue of having been deposited in joint marital account. *In re Kobernusz*, 160 B.R. 844 (Bankr. D. Colo. 1993).

Attorney's lien is not "required to be withheld" until it is enforced and should not be calculated as part of garnishable "disposable earnings" until that time. *Rios v. Mireles*, 937 P.2d 840 (Colo. App. 1996).

Trial court's determination that defendant was not supporting other dependents was supported by record. *Rios v. Mireles*, 937 P.2d 840 (Colo. App. 1996).

Defendant not entitled to more interest than has accrued on the amount due. *Rios v. Mireles*, 937 P.2d 840 (Colo. App. 1996).

Statutory limit on percent of wage that can be garnished is subject to fraud exception. Where debtor and garnishee colluded to avoid paying employee's wages until garnishment period had ended, court properly held garnishee liable for 100% of wages. *Hoyman v. Coffin*, 976 P.2d 311 (Colo. App. 1998).

Applied in *In re McCue*, 645 P.2d 854 (Colo. App. 1982); *Bernstein v. Richardson*, 34 B.R. 611 (Bankr. D. Colo. 1983).

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levy under execution or attachment - definitions (Colorado
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For the legislative intent contained in the 2006 act enacting subsection (1)(b)(IV), see section 8(2) of chapter 208, Session Laws of Colorado 2006. For the legislative declaration contained in the 2007 act amending subsection (2), see section 1 of chapter 226, Session Laws of Colorado 2007. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

§ 13-54-105. No exemption for taxes

Nothing in this article shall be construed to exempt any property of any debtor from sale for the payment of any taxes legally assessed.

(L. 59: p. 532, § 5. CRS 53: § 77-13-5. C.R.S. 1963: § 77-2-5.)

Colo. Rev. Stat. § 13-54-106 Exemptions applicable to all writs - exception for child support (Colorado Revised Statutes (2021 Edition))

§ 13-54-106. Exemptions applicable to all writs - exception for child support

The exemptions provided by this article shall extend and apply to writs of attachment, execution, and garnishment issued out of any court of record and by municipal courts, except those writs which are the result of a judgment taken for arrearages for child support or for child support debt which are subject to the exemptions set forth in section 13-54-104(3).

(L. 59: p. 532, § 6. CRS 53: § 77-13-6. C.R.S. 1963: § 77-2-6. L. 64: p. 287, § 216. L. 86: Entire section amended, p. 728, § 11, effective July 1. L. 87: Entire section amended, p. 586, § 2, effective July 10.)

ANNOTATION

The exemption procedure is an integral part of any garnishment proceeding. Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 (1978).

Plain language of section clearly permits the garnishment of otherwise exempt property or income for the collection of child support arrearages. Drachmeister v. Brassart, 93 P.3d 566 (Colo. App. 2004).

§ 13-54-107. Exemptions in bankruptcy

The exemptions provided in section 522 (d) of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, are denied to residents of this state. Exemptions authorized to be claimed by residents of this state shall be limited to those exemptions expressly provided by the statutes of this state.

(L. 81: Entire section added, p. 894, § 3, effective July 1.)

ANNOTATION

Law reviews. For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For article, "Secured Transactions -- Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983). For article, "Over the Hill to the Poor House -- The Failure of Section 522 Bankruptcy Exemptions Under the Bankruptcy Reform Act of 1978", see 61 Den. L.J. 705 (1984). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 U. Colo. L. Rev. 175 (1985). For article, "Bankruptcy Law", which discusses Tenth Circuit decisions dealing with constitutionality of the Colorado bankruptcy exemptions, see 62 Den. U. L. Rev. 53 (1985). For article, "An Individual's Retirement Benefits Under the Bankruptcy Code", see 16 Colo. Law. 1211 (1987). For article, "Perils of Pre-Bankruptcy Planning: Transfers, Exemptions and Taxes", see 17 Colo. Law. 1513 (1988). For a discussion of Tenth Circuit decisions dealing with bankruptcy, see 66 Den. U. L. Rev. 683 (1989). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991).

Constitutionality. This section does not violate the uniformity clause of § 8 of art. VIII, U.S. Const., or the supremacy clause, art. VI, cl. 2, U.S. Const. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982); In re Robinson, 44 B.R. 292 (Bankr. D. Colo. 1984).

This section is constitutional, notwithstanding the fact that Colorado does not provide an exemption for alimony and support. *Ranes v. Molen*, 31 B.R. 70 (Bankr. D. Colo. 1983).

Debtor's claim that entire section is unconstitutional because second sentence exceeds state authority to deny federal exemptions is not addressed because debtor lacked standing to question the constitutionality of the statute. *Hinkson v. Pfleiderer*, 729 F.2d 697 (10th Cir. 1984).

Purpose of revision of exemption schedules. When Colorado revised its exemption schedules, it sought to meet congressional criticism that most of the state exemption laws are outmoded, designed for more rural times,

and hopelessly inadequate to serve the needs of and provide a fresh start for modern urban debtors. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

State exemption scheme conforms to federal legislative attempt.

Colorado's scheme of bankruptcy exemptions is in conformity with the federal legislative intent to provide the required "fresh start" to debtors in bankruptcy. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

Debtor limited to state exemptions. Because Colorado's bankruptcy exemptions are not inconsistent with the federal scheme of exemptions, a debtor may use only those exemptions provided for in Colorado law. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

Colorado has "opted out" and denied to its residents the right to choose the exemptions in 11 U.S.C. §522(d), thus confining its debtors to those exemptions enumerated in the Colorado statutes. In re Janesofsky, 22 B.R. 973 (Bankr. D. Colo. 1982).

Colorado exemptions are available only to Colorado residents.

Since debtor may not claim Colorado exemptions because she is not a Colorado resident, and since the 730-day domiciliary requirement in the federal bankruptcy code renders her ineligible to claim exemptions under any state's laws, debtor may claim federal exemptions. In re Underwood, 342 B.R. 358 (Bankr. D. Colo. 2006).

Debtor denied exemptions in 11 U.S.C. §522(d) because Colorado has "opted out" of said exemptions as allowed by federal law. Hinkson v. Pfeleiderer, 729 F.2d 697 (10th Cir. 1984).

Federal nonbankruptcy exemptions available to debtors. Colorado did not intend to deny the federal nonbankruptcy exemptions to debtors in this state, nor could Colorado deny those exemptions to its citizens. Those exemptions are specifically reserved to all debtors in 11 U.S.C.

§522(b)(2)(A). Thus, the federal nonbankruptcy exemptions are available to Colorado debtors. Ranes v. Molen, 31 B.R. 70 (Bankr. D. Colo. 1983).

Recorded encumbrance is secure claim. Where an encumbrance requiring payment of annual and special assessments is established by a prior recording of which the property owner had constructive notice when she accepted the deed, and where she also had actual notice from the contents of her deed, itself, the lienor holds a secured claim which a bankruptcy debtor must provide for. Lincoln v. Cherry Creek Homeowners Ass'n, 30 B.R. 905 (Bankr. D. Colo. 1983).

Judicial liens in bankruptcy. Judicial liens impair a bankruptcy debtor's equity where they are created subsequent to the establishment of a homestead right and no waiver is obtained from the property owner.

Consequently, pursuant to 11 U.S.C. §522 and §§ 13-54-107, 38-41-201 and 38-41-202, these liens are null and void and judicial liens. *Lincoln v. Cherry Creek Homeowners Ass'n*, 30 B.R. 905 (Bankr. D. Colo. 1983).

Applied in *Redin v. Fidelity Fin. Servs.*, 14 B.R. 727 (Bankr. D. Colo. 1981).