

CHAPTER 74

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 22-086

BY SENATOR(S) Winter and Gonzales, Moreno;
also REPRESENTATIVE(S) Gray and Gonzales-Gutierrez, Bacon, Benavidez, Bennett, Duran, Exum, Froelich, Herod, Jodeh,
Kennedy, Lindsay, Lontine, Michaelson Jenet, Ricks, Sirota, Titone, Weissman.

AN ACT

CONCERNING ASSETS EXEMPTED FROM SEIZURE IN CERTAIN PROCEEDINGS, AND, IN CONNECTION THEREWITH, EXPANDING THE AMOUNT AND APPLICATION OF THE HOMESTEAD EXEMPTION TO INCLUDE PERSONAL PROPERTY THAT IS ACTUALLY USED AS A RESIDENCE, INCREASING THE SCOPE AND AMOUNT OF ASSETS THAT MAY BE EXEMPTED, ADDING CERTAIN NEW EXEMPTIONS, RECREATING AND INCREASING AN EXEMPTION FOR MONEY IN DEPOSITORY ACCOUNTS, AND REMOVING A REQUIREMENT THAT A PERSON MUST DEPOSIT AND NOT COMMINGLE FUNDS IN ORDER TO RENDER CHILD SUPPORT PAYMENTS OR UNEMPLOYMENT BENEFITS EXEMPT FROM LEVY TO PAY A DEBT.

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

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) The recent rises in Colorado's population and home values have made it more difficult for people to find affordable housing;

(b) This housing crisis affects a wide swath of the population, putting more pressure on family budgets;

(c) The higher cost of housing has forced many of Colorado's aging and less-wealthy individuals to reside in unconventional housing, including tiny homes; recreational vehicles, campers, and other vehicles; boats and other vessels; and other types of real and personal property;

(d) Unfortunately, individuals residing in such unconventional housing do not enjoy protection from creditors under Colorado's homestead exemption law because Colorado's definition of a "homestead" applies to real property and to mobile homes, manufactured homes, trailers, and trailer coaches but not to other types of unconventional housing; and

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(e) When creditors acquire and dispose of property that serves as unconventional housing, the residents of such housing are often left homeless.

(2) The general assembly also finds that:

(a) Section 1 of article XVIII of the state constitution requires the general assembly to pass liberal homestead and exemption laws;

(b) Colorado courts have expressed a policy of broad and liberal interpretation of the homestead exemption;

(c) In 1982, with the enactment of Senate Bill 82-27, and in 1983, with the enactment of House Bill 83-1428, the general assembly expanded the homestead exemption to apply to mobile homes and manufactured homes, respectively;

(d) In 2000, with the enactment of Senate Bill 00-003, the general assembly again expanded the homestead exemption to include trailers and trailer coaches; and

(e) Nonetheless, in 2016, in the case of *In re Romero*, the United States district court for the district of Colorado declined to interpret Colorado's homestead exemption as applying to unconventional dwellings and sleeping quarters that are not specifically described in the homestead exemption statute.

(3) The general assembly also finds that:

(a) The original purpose of the homestead exemption was to protect an amount of equity that is required to keep a roof over a family's head;

(b) The increase in the cost of homes has left the current homestead exemption outdated;

(c) For many individuals, home ownership is the cornerstone of the American dream, yet as of November 5, 2021, the typical home value in the United States is \$316,368, according to Zillow, and this value is seasonally adjusted and includes only the middle-price tier of homes;

(d) Of course, home values are not uniform across the country, and in some states a typical home costs far more than the national average. According to Zillow, the value of a typical single-family home in Colorado is \$442,766, which is higher than the national average as reported by Microsoft's MS Money app.

(e) Based on these figures, Colorado's statutory homestead exemption amount of \$75,000 protects only about 17% of the value of the typical Colorado home and about 24% for homeowners who are elderly or disabled; and

(f) According to the Denver Metro Association of Realtors, the median closing price of a home in the Denver metro area was \$543,000 for November 2021.

(4) The general assembly therefore declares that it is in the best interests of residents of the state for the general assembly to:

- (a) Increase the amount of the homestead exemption;
- (b) Expand the definition of "homestead" to expressly include a broad range of real and personal property when such property is actually used as a dwelling or place of residence;
- (c) Increase the maximum amounts of existing exemptions for depository accounts and certain types of property; and
- (d) Create new exemptions for:
 - (I) Firearms and hunting and fishing equipment;
 - (II) Economic impact payments;
 - (III) Health savings accounts; and
 - (IV) Money placed into a life expectancy set-aside account or similar reserve fund, escrow, or impound account, which money is derived from reverse mortgage proceeds that are designated for specific uses.
- (e) Remove the requirement that a person not commingle funds in order to claim an exemption for child support payments or unemployment benefits.

SECTION 2. In Colorado Revised Statutes, **amend** 38-41-201 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 ~~seventy-five~~ TWO HUNDRED FIFTY thousand dollars if the homestead is occupied as a home by an owner ~~thereof~~ or an owner's family; or
- (b) The sum of ~~one hundred five~~ THREE HUNDRED FIFTY thousand dollars if the homestead is occupied as a home by an ~~elderly or disabled~~ owner WHO IS ELDERLY OR DISABLED, an ~~elderly or disabled spouse of an owner~~ OWNER'S SPOUSE WHO IS ELDERLY OR DISABLED, or an ~~elderly or disabled dependent of an owner~~ OWNER'S DEPENDENT WHO IS ELDERLY OR DISABLED.

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

- (a) ~~"Disabled owner", "disabled spouse", or "disabled dependent"~~ "DISABLED" means ~~an owner, spouse, or dependent who has~~ HAVING a physical or mental impairment that is disabling and that, because of other factors such as age, training, experience, or social setting, substantially precludes the ~~owner, spouse, or dependent~~ PERSON from engaging in a useful occupation as a homemaker, a wage earner, or a self-employed person in any employment that exists in the community and for which ~~he or she~~ THE PERSON has competence.

(b) ~~"Elderly" owner", "elderly spouse", or "elderly dependent"~~ "ELDERLY" means ~~an owner, spouse, or dependent who is sixty years of age or older.~~

SECTION 3. In Colorado Revised Statutes, **amend** 38-41-205 as follows:

38-41-205. Of what homestead may consist. (1) The homestead mentioned in this part 2 may consist of:

(a) A DWELLING, AS DEFINED IN SECTION 38-41-201.7;

(b) A house and lot or lots, INCLUDING MANUFACTURED HOMES, MOBILE HOMES, TRAILERS, AND TRAILER COACHES, AS SET FORTH IN SECTION 38-41-201.6; or

(c) ~~of~~ A farm consisting of any number of acres.

SECTION 4. In Colorado Revised Statutes, **add** 38-41-201.7 as follows:

38-41-201.7. Definition of "dwelling" - personal property included. (1) AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES, "DWELLING" MEANS CONVENTIONAL HOUSING AND PERSONAL PROPERTY THAT IS ACTUALLY USED AS A RESIDENCE, INCLUDING:

(a) A VEHICLE, AS DEFINED IN SECTION 42-1-102 (112), INCLUDING ANY TRAILER, AS DEFINED IN SECTION 42-1-102 (105);

(b) A VESSEL, AS DEFINED IN SECTION 33-13-102 (5);

(c) A CAMPER COACH, AS DEFINED IN SECTION 42-1-102 (13);

(d) MOUNTED EQUIPMENT, AS DEFINED IN SECTION 42-1-102 (60);

(e) A RAILWAY CAR;

(f) A SHIPPING OR CARGO CONTAINER OR SHED;

(g) A YURT; AND

(h) A TINY HOME, WHETHER MOVABLE ON WHEELS OR STATIONARY ON A FOUNDATION.

SECTION 5. In Colorado Revised Statutes, **amend** 38-41-207 as follows:

38-41-207. Proceeds exempt - bona fide purchaser. (1) THE FOLLOWING PROCEEDS ARE EXEMPT FROM EXECUTION OR ATTACHMENT FOR A PERIOD OF THREE YEARS AFTER RECEIPT IF THE PERSON ENTITLED TO THE EXEMPTION KEEPS THE EXEMPTED PROCEEDS SEPARATE AND APART FROM OTHER MONEY SO THAT THE PROCEEDS MAY BE ALWAYS IDENTIFIED:

(a) The proceeds from the exempt amount under this part 2, in the event the property is sold by the owner; ~~or~~

(b) The proceeds from ~~such~~ A sale OF HOMESTEAD PROPERTY under section 38-41-206 paid to the owner of the property or person entitled to the homestead; ~~shall be exempt from execution or attachment for a period of two years after such sale if the person entitled to such exemption keeps the exempted proceeds separate and apart from other moneys so that the same may be always identified.~~ OR

(c) THE PROCEEDS FROM INSURANCE COVERING DESTRUCTION OF HOMESTEAD PROPERTY HELD FOR USE IN RESTORING OR REPLACING THE HOMESTEAD PROPERTY, UP TO THE AMOUNT SPECIFIED IN THIS SECTION.

(2) If the person receiving ~~such~~ THE proceeds uses ~~said~~ THE proceeds in the acquisition of other property for a home, ~~there shall be carried over to the new property~~ the same homestead exemption to which the owner was entitled on the property sold ~~Such~~ CARRIES OVER TO THE NEW PROPERTY. THE homestead exemption ~~shall~~ IS NOT BE valid as against ~~one~~ A PERSON entitled to a vendor's lien or the holder of a purchase money mortgage against ~~said~~ THE new property.

SECTION 6. In Colorado Revised Statutes, 13-54-102, **amend** (1)(e), (1)(g), (1)(i), (1)(j)(I), (1)(j)(II)(A), (1)(o), (1)(s), (1)(u), (1)(v), (1)(w), and (3); and **add** (1)(x), (1)(y), (1)(z), and (6) as follows:

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

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

(g) (I) Except as otherwise provided in ~~subparagraph (II) of this paragraph (g)~~ SUBSECTION (1)(g)(II) OF THIS SECTION, 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 OR the raising of livestock or poultry, THE FOLLOWING, IN THE AGGREGATE VALUE OF ONE HUNDRED THOUSAND DOLLARS:

(A) All livestock, poultry, or other animals;

(B) All crops, dairy products, and agricultural products grown, raised, or produced; and

(C) 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~~ ONE HUNDRED thousand dollars ~~shall be~~ IS allowed for a debtor and ~~his or her~~ THE DEBTOR'S spouse under ~~subparagraph (I) of this paragraph (g)~~ SUBSECTION (1)(g)(I) OF THIS SECTION. In the event that property is claimed as exempt by a debtor or ~~his or her~~ THE DEBTOR'S spouse under ~~subparagraph (I) of this paragraph (g)~~ SUBSECTION (1)(g)(I) OF THIS SECTION, no exemption ~~shall be~~ IS allowed for ~~such~~ THE debtor or ~~his or her~~ THE DEBTOR'S spouse under ~~paragraph (i) of this subsection (1)~~ SUBSECTION (1)(i) OF THIS SECTION.

(i) (I) EXCEPT AS DESCRIBED IN SUBSECTION (1)(i)(II) OF THIS SECTION, the stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of a debtor THAT ARE used and kept for the purpose of carrying on:

(A) The debtor's primary gainful occupation, in the aggregate value of ~~thirty~~ SIXTY thousand dollars; or

(B) ~~used and kept for~~ Any other gainful occupation, in the aggregate value of ~~ten~~ TWENTY thousand dollars.

(II) ~~except that~~ Exempt property described in this ~~paragraph (i)~~ SUBSECTION (1)(i) may not also be claimed as exempt pursuant to ~~paragraph (j) of this subsection (1)~~ SUBSECTION (1)(j) OF THIS SECTION.

(j) (I) Up to two motor vehicles or bicycles kept and used by any debtor, in the aggregate value of ~~seven thousand five hundred~~ FIFTEEN THOUSAND dollars; or

(II) (A) Up to two motor vehicles or bicycles kept and used by any ~~elderly or disabled~~ debtor WHO IS ELDERLY OR DISABLED or by any ~~debtor with an elderly or disabled~~ DEBTOR'S spouse or dependent WHO IS ELDERLY OR DISABLED, in the aggregate value of ~~twelve thousand five hundred~~ TWENTY-FIVE THOUSAND dollars.

(o) The full amount of any federal or state income tax refund attributed to an earned income tax credit or a ~~ANY~~ child tax credit, WHETHER AS A REFUNDABLE TAX CREDIT OR AS A NONREFUNDABLE REDUCTION IN TAX;

(s) Property, including funds, held in or payable from any pension or retirement plan, ~~or~~ deferred compensation plan, AND HEALTH SAVINGS ACCOUNTS, 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~~ THAT qualify under the federal "Employee Retirement Income Security Act of 1974", as amended; ~~as an~~ ANY 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;

(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~~ OF SUCH A CLAIM, not otherwise provided for under law, up to ~~four~~ FIVE 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) ~~(f) Through June 1, 2021;~~ Up to ~~four~~ TWO thousand FIVE HUNDRED dollars cumulative in a depository account or accounts in the name of the debtor.

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

(x) THE DEBTOR'S AGGREGATE INTEREST IN FIREARMS AND HUNTING AND FISHING EQUIPMENT HELD FOR PERSONAL, FAMILY, OR HOUSEHOLD USE OR FOR THE PERSONAL SAFETY OF THE DEBTOR AND MEMBERS OF THE DEBTOR'S HOUSEHOLD, NOT TO EXCEED ONE THOUSAND DOLLARS IN VALUE;

(y) (I) ANY ECONOMIC IMPACT PAYMENT HELD BY OR PAYABLE TO A DEBTOR OR TO A DEBTOR'S DEPENDENTS IN ANY FORM.

(II) AS USED IN THIS SUBSECTION (1)(y) AND IN SUBSECTION (3) OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ECONOMIC IMPACT PAYMENT" MEANS A PAYMENT FROM A FEDERAL, STATE, OR LOCAL GOVERNMENT TO A DEBTOR OR TO A DEBTOR'S DEPENDENTS TO ASSIST IN MANAGING THE ECONOMIC CONSEQUENCES OF A NATIONAL OR STATEWIDE EMERGENCY OR DISASTER. "ECONOMIC IMPACT PAYMENT" INCLUDES:

(A) ALL ECONOMIC IMPACT AND STIMULUS RECOVERY PAYMENTS TO DEBTORS PURSUANT TO THE FEDERAL "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT", PUB.L. 116-136, AS AMENDED, OR OTHERWISE RELATING TO THE COVID-19 PANDEMIC; AND

(B) ALL OTHER ECONOMIC IMPACT OR STIMULUS RECOVERY PAYMENTS TO DEBTORS, WHICH PAYMENTS ARE AUTHORIZED TO ASSIST WITH ECONOMIC RECOVERY FROM THE COVID-19 PANDEMIC OR FROM ANY NATIONAL OR STATEWIDE EMERGENCY OR DISASTER. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS DEFINITION BE INTERPRETED IN THE BROADEST POSSIBLE MANNER TO PROTECT SUCH PAYMENTS.

(z) ALL MONEY PLACED INTO A LIFE EXPECTANCY SET-ASIDE ACCOUNT OR SIMILAR RESERVE FUND, ESCROW, OR IMPOUND ACCOUNT, WHICH MONEY IS DERIVED FROM REVERSE MORTGAGE PROCEEDS THAT ARE DESIGNATED FOR USE TO PAY FOR REAL ESTATE PROPERTY TAXES; HOMEOWNER'S HAZARD, FLOOD, OR OTHER PROPERTY INSURANCE; OR OTHER HOME MAINTENANCE EXPENSES.

(3) ~~Notwithstanding the provisions of paragraph (s) of subsection (1)~~ SUBSECTIONS (1)(s) AND (1)(y) of this section, any ECONOMIC IMPACT PAYMENT AND ANY pension or retirement benefit or payment shall be is 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.

(6) TO THE EXTENT THAT EXEMPT ASSETS ARE COMMINGLED WITH NONEXEMPT ASSETS, A FIRST-IN FIRST-OUT ACCOUNTING SHALL BE USED TO DETERMINE THE PORTION OF THE COMMINGLED ASSETS TO WHICH THE EXEMPTION APPLIES. IF EXEMPT ASSETS ARE COMMINGLED WITH NONEXEMPT ASSETS AS PART OF A SINGLE TRANSACTION, ANY AMOUNTS WITHDRAWN FROM AN ACCOUNT FOR THE PURPOSE OF SUCH TRANSACTION SHALL BE ASSESSED ON A PRO RATA BASIS. THIS SUBSECTION (6) APPLIES TO ALL PROVISIONS OF THE COLORADO REVISED STATUTES CONCERNING THE EXEMPTION OF ASSETS FROM SEIZURE, EXCEPT FOR EXEMPTIONS THAT REQUIRE SEGREGATION.

SECTION 7. In Colorado Revised Statutes, amend 13-54-102.5 as follows:

13-54-102.5. Child support payments - exemption. (†) 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.~~

SECTION 8. In Colorado Revised Statutes, **amend** 8-80-103 as follows:

8-80-103. Assignment of benefits void - exemptions. Any assignment, pledge, or encumbrance of any right to benefits ~~which~~ THAT are or may become due or payable under articles 70 to 82 of this ~~title shall be~~ TITLE 8 ARE void. Except as provided in the "Colorado Child Support Enforcement Procedures Act", article 14 of title 14, ~~C.R.S.~~; such rights to benefits ~~shall be~~ ARE exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by any individual ~~so long as they are not mingled with other funds of the recipient, shall be~~ ARE exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to ~~such~~ THE individual, ~~his~~ THE INDIVIDUAL'S spouse, or THE INDIVIDUAL'S dependents during the time when ~~such~~ THE individual was unemployed or child support debt or arrearages as specified in article 14 of title 14. ~~C.R.S.~~ Any waiver of any exemption provided for in this section ~~shall be~~ IS void.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: April 7, 2022