

10<sup>th</sup> Circuit Court of Appeals  
HONORABLE Judges **Tymkovich, Ebel & Holmes**

In re: Borgman, Debtors  v. Robertson Cohen US Trustee	Case No.: 11-1369 BAP  Chapter 7
In re: Dunckley, Debtors  Vs.  Robertson B. Cohen, Appellant	Case No.: 11-1371 BAP  Chapter 7
Amicus Curie Brief.	
COMES NOW Attorney, Mark Saiki, and presents the following Amicus Curie Brief:	
<ol style="list-style-type: none"><li>1. I am a Debtor’s Attorney, who briefed these issues, for one of my clients.</li><li>2. I found the legislative history that the Bankruptcy and BAP Appellate Courts have said do not exist. Congressional intent can be found online. The audio tapes are available in the basement of the State Capitol, in Denver, Colorado.</li></ol>	
<p><b>I. Colorado Legislative History.</b></p> <ol style="list-style-type: none"><li>3. CRS 13-54-102(1)(o), was debated by the Colorado Legislature in 2007, as Senate Bill 07-158.</li><li>4. The draft version, of Senate Bill 07-158, demonstrates awareness that Colorado Legislators understand the difference between income tax refunds and credits, either of which might later lead to refunds. “The full amount of any federal or state INCOME TAX REFUND ATTRIBUTED TO AN earned income tax credit <del>refund</del> OR A CHILD TAX CREDIT.” CRS 13-54-102. Property exempt. (1)(o). By crossing out the term “refund” and including both the terms “refund” and “tax credit,” it can safely be said that in 2007, these Colorado legislators knew the difference between tax refunds and credits. They meant to exempt the “full amount of any federal or state” tax refunds attributed to child tax credits.</li><li>5. In 2007, the state legislature debated and passed Senate Bill 07-158, which became CRS 13-54-102(1)(o), after it was signed into law by the Governor.</li></ol>	

6. Both of the bill's sponsors referred to exempt child tax credits (plural). Each of them are married with minor children. Presumably they themselves personally take the above- and below-the-line credits on their tax returns, as do most of their peers.

7. The bills' sponsor Colorado Senator Betty Ann Boyd (from Lakewood), is married and has children of her own. She is a veteran legislator who has served in the Colorado Senate for five years and nine months. She is a member of the Senate Finance Committee. On February 7, 2007, in the Colorado Senate, Senator Boyd noted that Senate Bill 158:

Increases assets that are exempt from execution in debt collection proceedings. This is a bill that has been put together by the Bankruptcy section, business law subsection of the Colorado Bar Association . . . The Bill adds exemptions for Child Tax credits, maintenance and support obligations, disability payments and worker's comp proceeds.

By phrasing this as a plural exemption, she evinced an unmistakable legislative intent to exempt both the above- and below-the-line child tax credits. See also the attached abridged and unabridged transcripts, concerning Senate Bill 158.

8. Not only does Senate Bill 158's Senatorial sponsor, make zero mention that this bill exempts one Child Tax credit, and not the other, but she expressly refers to "Child Tax credits."

9. Likewise, Senate Bill 158's other sponsor also referred to exempt child tax credits. On March 22, 2007, Senate Bill 158 was introduced to the Colorado House of Representatives. Its sponsor Representative Michael P. Cerbo (from Denver), is a practicing attorney, and a labor leader. He is a veteran legislator having served four years and six months in the Colorado House of Representatives. He is a member of the Business Affairs and Labor Committee. He is married with two children of his own, who play Little League baseball. He also has hands-on experience with the Child Tax credits, as he presumably files taxes and personally takes the child tax deductions for himself.

He said that Senate Bill 158 concerns assets exempted from execution and debt collection proceedings. It is a product of the bankruptcy subsection, of the Business law subsection, from the Colorado Bar Association. "The bill provides that any income tax refund based upon a child tax credit will be exempt." This provides unambiguous support for Debtor's argument that both the tax credit and refund were intended to be exempt, under Colorado law. His choice of the term "any" is quite revealing. Every refund, which is "based" upon a child tax credit, is beyond the reach of creditors.

10. On March 30, 2007, in the Colorado House, on Senate Bill's 158 second reading, Representative Cerbo said, "The Bill adds exemptions for Child Tax credits, maintenance and support obligations, disability payments and worker's compensation proceeds." Again he referred to "Child Tax credits (plural). This provides strong support for debtors' argument that both of the above- (Form 1040-line 51) and below-the-line child tax credits are exempt (Form 1040-line 65).

11. Both of Senate Bill's 158 sponsors, Senator Betty Boyd and Representative Michael P. Cerbo, said that "Child Tax credits" were exempt. These legislators both said that Child Tax credits (plural) were exempt.

12. Not one single speaker, witness or Colorado legislator said, we intend to exempt one portion of the Child Tax credit, and not the other. They did not intend line 51 to be non-exempt, while protecting working families with children with line 65.

13. On March 1, 2007, in the Colorado Senate, expert witness and debtor's attorney Guy Humphries testified in support of Senate Bill 158. He stated that the class of protected persons, are families with minor children, who deduct child tax credits from their tax returns. Congress' intent was to allow these families to keep those refunds, based on those credits.

14. Likewise, on March 22, 2007 (when the bill was introduced to the House), debtor's attorney Robert Montgomery--who has been licensed since 1971--testified in favor of Senate Bill 158's adoption. He referred to the tax "deductions," and "funds" in their plural forms. This provides clear support for Debtor's argument that both the above- and below-the-line Child Tax credits were intended to be exempt.

15. The Bankruptcy Courts' restrictive rulings frustrates the liberal and beneficent intent of our state Constitution and the Colorado legislature. These narrow and restrictive decisions lead to the absurdity that the word "any" means one, but not the other. That "credits" refers to line 65, but not line 51. That "deductions" signifies a singular exemption. That "full amount," refers to the below-the-line Additional Child Tax credit on line 65 (IRS form 8812), while it excludes the \$1,000 per infant above-the-line Child Tax credit on line 51 (IRS form 2441).

16. On the other hand, the BAP analysis, that both child tax credits are exempt, is consistent with a critical analysis of the three prior Colorado cases, and our state's legislature history. The Appellate Court's expansive interpretation breathes life and purpose into this exemption law. Our elected representatives intended to exempt the "full amount of any" tax refund, which was "attributable" to Child Tax credits.

## **II. Case Law Discussion.**

17. Three Bankruptcy decisions have interpreted this exemption statute. *In re Camilletti*, (Colorado Bankruptcy Court, 07-25140-SBB, June 14, 2011); *In re:*

*Landgrebe*, (United States Bankruptcy Court, D. Colorado, Bankruptcy Case No. 08-26271 EEB, September 23, 2009); *In re Nichols*, (Colorado Bankruptcy Court, 10-10949 ABC, June 14, 2011).

18. The case at bar presents this Court with an opportunity to affirm the correct rule of law. Namely, both Child Tax Credits are exempt under Colorado law.

19. The rationale behind distinguishing those earlier decisions is two-fold:

- a) Those three cases make a hyper-technical distinction, which is contrary to Colorado exemption law. They create a distinction out of whole cloth, which has zero practical significance.
- b) And finally, the foundations for those opinions sharply conflict with Colorado Legislative intent in 2007, when the statute was drafted and debated.

20. Judge Brooks exempts the below-the-line child tax credit, and he holds that the above-the-line child tax credit is non-exempt. *In re Camilletti*, (Colorado Bankruptcy Court, 07-25140-SBB, June 14, 2011).

21. Judge Brooks looks to Kentucky, Florida and Illinois to interpret a Colorado exemption statute. This is plain error. The obvious place to look for the Centennial State's intent, is in the basement of the state capital building. Their archives have largely complete transcripts of legislative debates, including the 2007 discussions that led to the passage of Senate Bill 158.

22. That lower-court decision asked how many angels can dance on the head of a pin, and he came up with the wrong answer. By focusing on the term "bicycles," the Court in effect is ruling that tricycles and unicycles are not exempt household goods. The Greek word "bi" means two and by definition tricycles have three wheels and unicycles have only one wheel.

23. In every Bankruptcy case, which comes before the Court, the debtors have a tax refund coming. If they owed taxes, there would be no case in controversy. No panel Trustee members would offer to pay debtor's tax liability out of their own pocket.

24. One might inquire, at the First Meeting of Creditors: Your \$1,000 per child tax refund is attributable<sup>1</sup> to what? Their logical, linguistically correct, and plain language answer would be that their refund was the product of both the above- and below-the-line Child Tax credits.

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<sup>1</sup> "Attribute . . . belonging to, produced by, or resulting from" an object. Jean L. McKechnie, *Webster's New Twentieth Century Dictionary of the English Language*, (New York, 1965), 122.

<p>25. As a result of having children, and claiming both the primary and secondary child tax credits, they received a larger tax refund, for that year. A “but/for” cause of their \$1,000 per child larger tax refund, were the Child Tax credits.</p>
<p>26. Judge Brooks’ interpretation frustrates Colorado’s liberal exemption laws. It emasculates the term “any.” By contrast, Debtor’s interpretation gives life, effect and purpose to that wording. Refunds, which are caused by the below-the-line refundable additional child tax credit, and the above-the-line Child Tax credit, are each exempt.</p>
<p>27. Brooks’ opinion likewise undermines the term “full amount.” By comparison, Debtor’s interpretation breathes meaning into that term. Taxpayers are entitled to the “full amount” of any tax refunds attributable to Child Tax credits.</p>
<p>28. Analysis of the second Bankruptcy Court decision, is far more revealing. “The statute does not specify what type of ‘child tax credit’ it refers to, nor can the Court locate any case law interpreting that term.” <i>In re: Landgrebe</i>, (United States Bankruptcy Court, D. Colorado, Bankruptcy Case No. 08-26271 EEB, September 23, 2009).</p>
<p>29. There is ambiguity in the statute. Child Tax credit could refer to one, the other, or both of the child tax credits. Judge Brown’s admission that she could not locate any case law is quite important.</p>
<p>30. By repeating Judge Brooks’ fundamental error, looking to other states, to interpret a Colorado exemption statute, Judge Brown likewise ends up chasing through-bred racehorses (in Kentucky), instead of correctly mining the Centennial state’s legal history.</p>
<p>31. Finally, Judge Campbell repeats Judge Brooks’ cardinal sin.</p> <p>As stated by Judge Brown in her September 23, 2009 Order on Trustee’s Objection to Exemption (Child Tax Credit)” in <i>In re Landgrebe</i>, Bankr. Case No. 08-26271-EBB, there are indeed two parts to the child tax credit . . . Because this part of the credit may be used only for purposes of offsetting tax liability, no refund can be “attributed to it.” That is, it can reduce a taxpayer’s tax liability to zero, but a taxpayer is not entitled to a payment if the credit exceeds the amount due. <i>In re Nichols</i>, (Colorado Bankruptcy Court, 10-10949 ABC, June 14, 2011).</p>
<p>32. All three of these trial-court opinions make a technical distinction, between lines 51 and 64, from the Federal tax code. They conclude that the Colorado Senate and House of Representatives intended to exempt the Additional Child Tax credit,</p>

while denying similar coverage to the primary deduction. In effect, those courts have written the statute to mean that the below-the-line 65 Additional Child Tax credit is exempt, while the above-the-line 51 Child Tax credit is not. Such construction would be convincing had the Colorado Legislature inserted the word “Additional,” and omitted the phrase “Full amount of any Federal or state income tax return attributed to . . . a Child Tax Credit.”

33. These Bankruptcy Court decisions undermine the plain language in that statute. “Full amount,” is interpreted to mean partial credit. While the word “any” refund is deemed to actually apply to one section, and not the other. In comparison, Debtor’s interpretation makes sense of all of these terms. The phrase “full amount,” refers to both child tax credits. The BAP’s analysis correctly interprets the plain language in the statute. It empowers other terms in the statute; it achieves the goals of the Colorado Constitution and the State legislature; whose wise states persons, drafted and passed Senate Bill 158, in order to protect families with children of tender years.

34. 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).

35. 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).

36. Exemptions provided by this section for the purposes intended are favored . . . 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).

WHEREFORE Debtor moves that both the above- and below-the-line Child Tax credits are exempt. Lines 65 (deduction) and 51 (credit), should each be shielded from creditors, as the legislature so intended. Their objective was to protect the class of Colorado taxpayers, who are raising young children. The “full amount of any” tax refunds, which are attributable to Child Tax credits, should remain beyond the grasp of garnishing creditors. Misguided precedent should be overturned. Debtor moves for other appropriate relief, as this Court sees fit. Debtor’s Attorney will be in Court on Monday, and available to answer questions.

Respectfully Submitted:

          /s/ Mark Saiki            
Mark Saiki #12502  
Debtors’ Attorney

398 Cypress St  
Broomfield, CO 80020  
(303) 974 - 0074

Date: 3/14/2012

CERTIFICATE OF MAILING.

I the undersigned do solemnly swear under penalty of perjury that I am over the age of 18 years and not a party and that on the undersigned date the undersigned person(s) were sent a copy of this document in the above captioned matter by first class mail postage prepaid. To the best of Debtor's knowledge, Defendant is not an infant or an incompetent. The undersigned address is his dwelling house, usual place of abode or the place where he regularly conducts his business or profession, and/or Defendant corporation, partnership or unincorporated association was mailed a copy to the attention of an officer, managing or general agent or to any other agent authorized by appointment or by law to receive service of process.

Documents:

This Amicus Curie Brief

To:

Stephen Swift 733 E Costilla St # A Colorado Springs, CO 80903 (719) 520-0164 <a href="mailto:stephen.swift@swiftlaw.net">stephen.swift@swiftlaw.net</a>	By regular and email
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Signed:  /s/ Mark Saiki Dated: 3/15/2012

<p><b>I. Attached Exhibits to “Brief in Support of Dual Exemption Claims.”</b></p>
<p><b>II. Legislative History of Senate Bill 158</b>  <b>[Abridged]</b>  typed by Mark Saiki  full audio recordings are available on CD, DVD or flash drive  from the Colorado Legislative archives or from my office  Legislative.history.5a</p>
<p>2/7/2007  Colorado Senate</p> <p>Senator Betty Boyd:  Senate Bill 158  Increases assets that are exempt from execution in debt collection proceedings  This is a bill that has been put together by the Bankruptcy section, business law  subsection of the Colorado Bar Association . . .</p> <p>The Bill adds exemptions for Child Tax credits, maintenance and support  obligations, disability payments and worker’s comp proceeds.</p>
<p>3/1/2007,  Colorado Senate  Senate Committee on Finance Refer to Amended to Appropriations</p> <p>Guy Humphries:</p> <p>I am a bankruptcy lawyer representing the Colorado Bar Association . . .</p> <p>An important point, I think, is the Child Tax Credit, which currently is non-exempt.  The Child tax credit is essentially like an assistance payment. And if somebody files  for bankruptcy they would be able to keep the child tax credit. And I know that  Bankruptcy Trustees collectively agreed that was reasonable.</p> <p>Robin Hunt:  I am a Bankruptcy Attorney who primarily represent debtors  Appearing on behalf of the Colorado Bar Association</p>
<p>3/21/2007,  Senate second reading</p> <p>Senate Bill 158</p> <p>Vote: adopted</p>



Ayes have it  
The bill is adopted

SB 158  
Colorado Senate  
3/22/2007 third reading

Any no votes? Brophy, Renfro, Tuck,  
SB 158 is adopted on third reading  
Final passage 27 ayes, 7 nos, 1 excused

Colorado House  
3/22/2007  
Senate Bill 158 introduced to House

Representative Michael P. Cerbo:  
Senate Bill 158 Concerning assets exempted from execution and debt collection proceedings. It is the product of the bankruptcy subsection, of the Business law subsection, from the Colorado Bar Association . . . The bill provides that any income tax refund based upon a child tax credit will be exempt.

Robert Montgomery:  
I am a practicing attorney. I do Primarily bankruptcy work for consumer debtors. I have been licensed since 1971 . . .

This bill is the result of discussions with the bankruptcy subcommittee, with Bankruptcy trustees, with members of the banking community, and collection agencies. We worked through the issues they had . . .

The provision regarding child tax credit, basically adds to the current exemption for income. I can't remember the exact term, child income credit, adds this provision to it. The belief is folks who are entitled to those deductions on their income taxes really do need those funds, and should be able to retain those funds for their family, notable taking care of small children in the family. And that is why we included that . . .

Robin Hunt:  
Behalf Bankruptcy subsection  
Colorado Bar Association . . .

Voice vote  
10 to 1  
Motion passes

Senate Bill 158 is adopted

Colorado House

3/30/2007

Senate Bill 158 Second reading

Representative Cerbo

I move Senate Bill 158

This bill is the product of the Bankruptcy Section, of the Colorado Bar subsection  
The Code limits not amended since 2000. These suggestions are crafted to keep pace  
with inflation, not tied to consumer price index . . .

The Bill adds exemptions for Child Tax credits, maintenance and support  
obligations, disability payments and worker's compensation proceeds . . .

The bill has been Amended to address concerns raised by Independent Banker's  
Association, Colorado Banker's Association, Credit Union Association of Colorado,  
Colorado Collection agencies and the NFIB. I ask for a Yes vote on this bill

Rep Mitchell:

Put up second chart

This what happens if Senate Bill 158 passes

\$60,000 equity in home

disabled or senior \$90,000 equity in home

\$5,000 equity in car

\$2,000 personal effects or jewelry

file BR able to keep \$87,000 to \$143,000 assets keep

walk away with assets

who rightfully owes debts

I ask for a no vote . . .

Chair:

Voice vote

All those in favor of Senate Bill 158 please rise

I am putting the House Recess for a moment

Colorado House

Senate Bill 158 Second Reading

3/30/2007

Chair:

all those opposed please rise

stand to vote

Senate Bill 158 is adopted

House Senate Bill 158 Third Reading 4/2/2007  Chair: Third reading and final passage Open machine Close the machine 44 aye vote, 21 no votes Senate Bill 158 is adopted	
<b>III. Summarized History for Bill Number SB07-158</b> (The date the bill passed to the committee of the whole reflects the date the bill passed out of committee.)	
02/07/2007	Introduced In Senate - Assigned to Finance
03/01/2007	Senate Committee on Finance Refer Amended to Appropriations
03/16/2007	Senate Committee on Appropriations Pass Unamended to Senate Committee of the Whole
3/20/2007	Senate Second Reading laid over
3/21/2007	Senate Second Reading Passed with Amendments
3/22/2007	Introduced in House – Assigned to Finance
3/22/2007	Senate Third Reading Passed
3/28/2007	House Committee on Finance Pass Unamended to House Committee of the Whole
3/30/2007	House Second Reading Special Order – Passed
4/2/2007	House Third Reading Passed
4/10/2007	House Third Reading Reconsidered
4/12/2007	House Third Reading Passed with Amendments
4/12/2007	Senate Considered House Amendments - Result was to concur- Repass

5/2/2007	Signed by the President of the Senate
5/3/2007	Signed by the Speaker of the House
5/3/2007	Sent to the Governor
5/14/2007	Governor Action – Signed

<http://www.leg.state.co.us/clics/c1ics2007a/csl.nsf/billsuramary/27ED41BD59E5EE0A872...> 3/17/2011

**IV. Legislative History of Senate Bill 158**  
**[UnAbridged]**  
 Legislative.history.4

Senate Bill 158  
 Put together by Bankruptcy subsection of the bar

2/7/2007  
 Colorado Senate

Chair:  
 Finance Committee come to order  
 call roll

Senator Boyd:  
 Senate Bill 158  
 Increases assets that are exempt from execution in debt collection proceedings  
 This is a bill that has been put together by the Bankruptcy section, business law subsection  
 Colorado Bar Association  
 Drafters attorneys who work with individuals who are going through federal bankruptcy process  
 I have a couple of Experts in this area of the law  
 Testify technical aspects of the law  
 Impact on the people they work with  
 Current amendments have not been amended since 2000  
 Senator Ed Perlmutter Rep Matt Smith  
 Keep pace with inflation  
 But are not tied to consumer price index

The Bill adds exemptions for Child Tax credits, maintenance and support obligations, disability payments and worker's comp proceeds.  
 Reasonable adjustments to keep pace with inflation  
 Others did not completely agree

Amendment L 0002

Now reasonable adjustments have been made even more so  
The amendment is a compromise reached with groups who had reservations with the bill,

But are now OK with the bill

Bankers, credit unions, the collection agencies and now the NFIB

Fact sheet covers exemptions

Legislative declaration

Six years is reasonable

When changes might be expected

Nothing carved in stone

Peace of mind, take any play out of automatic adjustments

Legislative intent

Homestead in place

Tradeoff takes care banker's association and credit union

Not avoid consensual lien on property

Continued crafting going on consensual lien language

Senate Bill 158

L002 Amendment

NFIB,

Trade off, not avoid a consensual lien

2<sup>nd</sup> reading amendment

tools of trade exemption \$10,000 to \$25,000

amendment reduces from \$25,000 to now \$20,000

based minimum wage floor based on Colorado Minimum wage

collection agencies, keep formula current law

garnishment floor based on Colorado Minimum Wage of \$6.85 an hour

\$670 to \$890

L002 keeps formula intact

Collection agencies, keep formula in current law

And also reflect current minimum wage

I would ask for your support of Senate Bill 158

Senator Romer

Compliment changes

Thank you for working hard to get it done

3/1/2007, Senate Committee on Finance Refer to Amended to Appropriations

Senator Boyd: 10:51 am, amendment, floor \$670 per month,

Garnishment floor, Colorado minimum wage \$6.85 an hour

L-002 Amendment

Garnishment floor raised \$670 to \$690

Keeps formula intact

Guy Humphries:

I am a bankruptcy lawyer representing the Colorado Bar Association.

Exemptions exist in all states and federal bankruptcy laws

I will give a quick overview

Exemptions cannot be taken from him

As an easy example, if he files for Bankruptcy they can't take his shoes or clothes

That is an easy example

Exist in Colorado since State was formed.

The 1876 Constitution says "shall pass liberal exemption laws"

We are tweaking the exemption laws

Just keeping up with the cost of living.

Makes sense and are reasonable

What we are dealing with is compromise legislation.

We have been working on bar association process for two years

Bankruptcy trustees and creditor attorneys

Bankruptcy Trustees collection attorneys and foreclosure attorneys have signed off on this.

Received comments from Bank lobbies, collection attorneys

And Collection attorney comments.

This really is compromise legislation

We all think it is fair, and moderate and reasonable.

One of the big things we are doing here is raising the homestead exemption from \$45,000 in Colorado to \$60,000

Compromise number really to keep up with inflation

We carved out an increased exemption for \$90,000 for elderly people over 65 or disabled.

It is a fair number, but it is really below other states allow

California \$125,000.

Texas and Florida unlimited exemptions

Bankruptcy code itself sets exemptions \$125,000

Colorado is an opt out state

Colorado sets its own exemption

\$60,000 is a reasonable number

We also increased motor vehicle from \$3,000 to \$5,000.

And up to \$10,000 if its elderly or disabled

\$5,000 basically gets you're a 10 year old vehicle

We increased tools of trade to \$20,000

farm exemption increased from \$25,000 to \$50,000 per farm

Jewelry we increased from \$1,000 to \$2,000 to protect wedding rings

An important point, I think, is the Child Tax Credit

Which currently is non-exempt

The Child tax credit is essentially like an assistance payment

And if somebody files for bankruptcy they would be able to keep the child tax credit.

And I know that Bankruptcy Trustees collectively agreed that was reasonable

Wage Garnishment law adjust to reflect rise in minimum wage

Minor tweaking workers comp benefits proceeds

Under current law exempt

Drafting error in the statutes

Court, once the award hits the bank account not longer exempt

If it can be traced, if a very fair thing

Disability payments up to \$3,000 per month.

Child support and maintenance exempt

Any arrearages would be exempt

Maintenance and alimony payments now called Domestic Support Obligations

Make consistent with Bankruptcy Code

All arrearages are exemption

Meaning they cannot lose them to creditors

In response to Banking lobby

They raised a legitimate concern

How Consensual liens might be treated in Bankruptcy

We been working with the Bank people

Pretty tricky

Way bankruptcy code worded

We are in agreement of what we are trying to accomplish

Fair and reasonable, compromise legislation

Senator Brophy:

Inflation adjuster

May not be an accurate picture of what inflation is

Section three, page five

Significant change in public policy

Not necessarily an inflation adjuster

Page five at line nineteen

New language

Shelter from garnishment

Nor we are directing the lesser of a couple of calculations

Existing limit is couched in minimum wage

Guy Humphries:

"Lesser of" 25% or essentially the minimum wage

tweak formula for minimum wage

we dropped that part

We change that to reflect state minimum wage

which ever is higher whether state or federal law

we needed to break it out that way to make it less confusing

Senator Brophy:

I understand the greater of Colorado minimum wage or federal minimum wage

Line 19 on page 5, section 1

Roman I specifically directs to choose the lesser of

Lesser 25% disposable earnings or minimum wage

Why not greater?

What is the current policy?

Guy Humphrey:

The intent is to codify current policy

If it needs to be fine tuned, we're fine with that

Keep current law

75% paycheck exempt, \$10 an hour job

assuming 40 hours a week job

somebody making \$10 an hour

25% paycheck subject to claims of creditors

40 but it is back down to 30

that really is the garnishment floor

the bottom line is our intent is not to change what exists now

Senator Boyd:

I understand the lesser of

A certain amount you need to live on

Threshold

Guy Humphrey:

Remains a garnishment floor

It really only kicks in someone earning minimum wage

Working part time

Floor is on a weekly basis

Below floor, not touch

Pretty low floor there

Chair:

Any other questions?



Robin Hunt:

Bankruptcy Attorney primarily represent debtors  
Appearing on behalf of the Colorado Bar Association

I would like to address Mr. Brophy's point

Missed it or got put in relatively late

Lesser 25% or minimum wage

Way drafted, only garnish minimum wage amount

I can't believe Nobody noticed that

Whichever is less

Moved to the beginning

"lesser of" nobody noticed

I think that we need to revisit this

language reverse

Senator Brophy:

Lesser of, massive shift of public policy

Reads so confusing except for this or except for that

Senator Boyd:

Address on second reading?

Agreed upon to be corrected

Senator Brophy, Would you be OK with that?

Brophy:

Very complicated reading

I will support this bill

Boyd:

Better that we get this right

Hunt:

Only point address,

Other piece, part dealing with

Federal exemptions

Opt out federal exemptions

Come up with own state exemption scheme

Portion to avoid or wipe out liens, if otherwise protected

Wipe out liens, property otherwise exempted for protected

One of the exemptions Tools of the trade

Bankers worried void tools of the trade

Not do that if lien exceeds \$5,000

Federal law opt out, maybe waived on Consensual lien

Reflect federal law allows the state law to do

Tools of the trade

Amount exceeds \$5,000 not wipe out lien

You can't wipe out a lien if the property is more than that

We agree in principle

Language everyone can sign off on that

Senator Morse:

Completely unrelated question

Definition elderly debtor

65 years of age or older

defined as 60 or older

would you object to changing that from 65 to 60?

Hunt:

Not object

Chair:

Boyd final thoughts?

Boyd:

Good discussion

Agreed that numbers we are presenting here are appropriate

Continue to have a home

Intent to keep working and pay off their debts

Go to Appropriations

Committed to working on two issues still in the air

L002-amendment

Senator Morse:

Morris, offer amendment

65 to 60

page 8, line 14 65 to 60

at age sixty people fall through cracks

not covered by Medicare

not eligible for Social Security

provide those folks extra protection for elderly

Senator Brophy:

Oppose amendment

Arbitrarily draw law

55 federal age for retirement

beyond working years

I can give you more of a break

under owe an obligation to continue with employment

60 does not separate you from 65  
65 in retirement or near retirement  
not have earning potential few years earlier  
potential to move to 67  
seen higher number  
65 appropriate number and 60 is wrong

Morse:  
bill sponsor says?  
Older Americans act, defines as over 60  
Going back to Medicare 65  
Not because of anything but fiscal note  
Social Security 65, fiscal note  
Trying to Stretch federal dollars

People at age 60 face huge hurdles  
Want to retire or not  
Lose job  
Very difficult to get a job  
Not have safety net  
Older American's Act says 60

Chair:  
Trouble getting reemployed if laid off

Boyd:  
Agree  
Difficult time finding work  
That group of people not on Social Security yet  
Not have problem with that change

Chair:  
Further discussion?

Chair:  
Voice vote  
Amendment passes  
Motion to refer to Appropriations passes

I think we are ready to take a vote on the bill itself  
Voice vote  
Congratulations that passes  
Madame Chair

Senate Finance will be in recess

Senate Bill 208 layover until tomorrow  
SB 209 passes  
SB 187  
3/21/2007, Senate second reading

Senate Bill 158  
11:12

Senator Boyd:  
Move Senate Bill 158  
I move the Finance committee report  
The bill increases the assets are exempt from execution  
Does a variety of things  
Increases assets subject to debt collection proceedings  
6 years is a fair amount of time to wait for new legislation  
in agreement with bankers and credit unions  
we keep the homestead exemption in place  
tradeoff most of the concerns  
We reduced the amount of increase for tools of the trade  
from \$25,000 to \$20,000, it reduces that increase  
some garnishment changes  
I will have a floor amendment to amend that

Motion to adopt finance committee report  
Voice vote

Boyd:  
Floor amendment 5  
By Senator Boyd  
Clarifies consensual lien language in the bill  
Increased minimum wage  
Added language  
Change effective rate  
Not immediately now July 1, 2007  
To allow to create necessary forms

Brophy:  
5 good amendment  
first time home buyer  
ask for aye vote

Boyd:  
Move floor amendment 5

Voice vote  
Adopted

Boyd:  
Renew motion  
Increase exemptions  
Keep pace with inflations  
Agreement  
Hammer out differences

degree of certainty  
increases homestead in place  
tradeoff  
reduced the amount the increase on tools of the trade  
now increased to \$20,000  
adopt finance committee report

floor amendment  
floor amendment 5 by Senator Boyd  
clarifies consensual liens language  
clarifies garnishment, minimum wage  
changed effective date bill  
immediate to July 1, 2007

voice vote  
bill adopted

Brophy  
5 good amendment  
critically important  
first time home buyer

Boyd move amendment  
Vote, adopted  
Renew motion  
Reasonable adjustment  
Keep pace with inflation  
Senate Bill 158  
I ask for your support

Vote: adopted  
Ayes have it  
The bill is adopted

16:13

SB 206  
SB 140  
SB 133  
SB 235 assigned to finance

Adjourn until 9:00 am tomorrow morning

SB 187 adopted

SB 158  
3/22/2007 third reading

Boyd:  
Move adoption  
SB 158 adopted

Any no votes? Brophy, Renfro, Tuck,  
SB 158 is adopted on third reading  
Final passage 27 ayes, 7 nos, 1 excused

SB 206

SB 214 to committee of the whole  
Voice vote

House  
3/22/2007 introduced to House

SB 214

1:18

Representative Cerbo:  
Senate Bill 158  
Concerning assets exempted from execution and debt collection proceedings  
Product of the bankruptcy subsection  
Of the Business law subsection  
From the Colorado Bar Association  
The bill adds a legislative declaration  
Reasonable increases for cost of living  
Consider changes only every six years

Homestead exemption increased to \$40,000 to \$60,000  
If Disabled homestead exemption increased to \$90,000

Proceeds extended from one to two years  
It increases motor vehicle increase \$3,000 to \$5,000 per person  
Elderly \$6,000 to \$10,000  
It increases the tools of trade, farm \$50,000  
Tools of trade exemption from \$10,000 to \$20,000 per person  
Jewelry exemption increased from \$1,000 to \$2,000

The bill provides that any income tax refund based upon a child tax credit will be exempt.

Raises the current amount of income that is exempt from garnishment to \$890 per month exempt  
new portions exempts worker's compensation exempt  
Bank accounts  
Exempts public and private disability payments  
Maintenance or alimony payments  
Couple of folks from the Bankruptcy subsection  
Essence of the bill

Mitchell:

Q. Why want to increase exemptions?

Personal effects such as jewelry

Why not put interests of people who are owed money first?

Cerbo:

Jewelry exemption has been there forever

purpose, wedding rings

this is just means to adjust for cost of living

some jewelry is extremely personal to you

the State allows you to keep portion of that

Frangas:

Q. Homestead exemption, how interact with Medicaid?

Spend down money qualify for Medicaid

Lundberg:

Homestead exemption as well

Is that the net equity, value of home?

\$90,000 does not account for anything in Denver

Experts better

In excess of all liens and encumbrances

Essentially equity in the home

6:50

Robert Montgomery:  
Practicing attorney  
Do Primarily bankruptcy work for consumer debtors  
Licensed since 1971  
Involved bill 2000, increased exemptions  
Happy to be back again  
Serve our clients, state of Colorado  
Need assistance  
Time changes were made

This bill is the result of discussions bankruptcy subcommittee  
With Bankruptcy trustees, with members of the banking community, collection  
agencies community,  
We worked through the issues they had

Briefly the bill is to a great extent an adjustment for inflation  
Key points, homestead exemption  
Increases fairly modest \$40,000 we have now, to a \$60,000 exemption  
Lundberg Q only applies to equity homeowner, after consensual liens have been  
paid for  
Value belongs to homeowner  
Little equity, we have the home literally sold out from under him by the Trustee  
Check for homestead exemption  
Not look for a new place to live  
Homestead proceeds,  
Hopefully it will eliminate possibility of a few more homes sold  
Colorado values the homestead  
Encourage people to become homeowners  
Modest compared to other states  
And the exemption which is provided in the Federal code \$125,000 exemption

Opted to use state laws, not federal exemption laws  
Not use federal exemption laws for cases that are filed in Colorado  
Kansas, Iowa, South Dakota, Florida, Texas, unlimited homestead exemptions  
The provision to limit it to \$125,000  
Was apparently Congress perceived as excessive exemptions  
Protects equity in the property to that extent  
No effect on consensual liens  
Signs deed of trust that gives a lien in the property  
Homestead typically waived against that creditor  
That puts them in first place equity in property if sold

Motor vehicles, extremely modest at best  
Increases exemption \$3,000 to \$5,000 in a vehicle  
Research used car guide



keep 10 year old Ford Taurus or something relatively the same in the Chevrolet variety

exempt 7 year old instead of 10

This is important for transportation to family members, school, medical appointments, to get them to and from work, to earn a living productive members of Colorado society

The tools of the trade increased farmers \$25-\$50,000

A provision in the bill prohibits stacking exemptions  
consensual liens waived

Jewelry exemption from \$1,000 to \$2,000

Quite frankly, mostly non-issue

significant if you have a wedding ring, maybe one diamond in it purchased 10-12 years ago

the question then becomes should that wedding ring be sold to pay creditors grand scope, insignificant value at that level

no significant payment to creditors

typically we see \$30,000-\$100,000 unsecured debt

when you spread \$1,000 over that

after the Trustee gets his 25% for his services

is not significant amount of money to pay to creditors

15:28

The provision regarding child tax credit, basically adds to the current exemption for income. I can't remember the exact term, child income credit, adds this provision to it. The belief is folks who are entitled to those deductions on their income taxes really do need those funds, and should be able to retain those funds for their family, notable taking care of small children in the family. And that is why we included that.

wage exemption geared toward state and federal minimum wage

workers comp benefits address a case law problem

claims exempt, but that is all it says

court ruling get paid, cash non-exempt

susceptible to turnover to creditors

literally 100% non-exempt

purpose compensate injuries without fault or liability

pending claim vs. paid, defeats purpose compensation award

until court decision, we assumed proceeds also exempt

but it isn't

disability payments essentially for the same reason and purpose

private insurer or public benefits

\$3,000 a month exemption

maintenance and alimony same purpose  
economically disadvantaged spouse entitled to some income  
maintain livelihood, household  
modify when employed  
can be adjusted downward  
stop gap measure  
can be long term in others  
exempted creditor's reach  
so household can be maintained

most of these matters relate to protect clients struggle to get back on feet  
after they suffered catastrophic medical  
lost job  
maintain so they can get back on their feet

Mitchell:

Alimony payments  
No ceiling how much can they keep?  
\$10,000 per month excluded,

Montgomery:

yes under present provisions of the bill  
did family law for 33 years  
not remember awards approach that  
theoretically possible

Chair:

Not know how often those people file for BR

Mitchell:

It happens frequently industry, sports figures  
Sports figure spouse credit cards  
Number of instances

Labuda:

No fault of own  
Had something Catastrophic happen  
Numbers not high enough to continue

Montgomery:

Do not disagree  
Bare bones minimum dollar amounts  
Numbers we arrived at after talking with Collect agency board  
Trustees in BR court  
Amount extremely low in some areas

At least provide that much protection  
Fresh start  
More helpful than current law

Frangas:

Q. What happen when somebody qualify for Medicaid?  
Consult with disabled community?

R. Montgomery:

No contact with (disabled)  
Same plane Medicaid and Medicare  
Interplay  
Own standards assets may or may not retain  
Not relate to exemption statutes  
Accept large block of salt  
Limited knowledge of programs

Lambert:

tie in with different kinds of bankruptcy  
Chapter 7, 11, 12, 13

Montgomery:

Apply across the board  
Ch 7, 11, 12: Family fisherman and farmers  
13: repayment plan  
yes it does

25:37

Lambert:

last change 2000  
Primarily cost of living adjustment  
50% more than inflation

R. Montgomery:

Homestead exemption  
92% increase from before  
exemption increase from \$30,000 to \$60,000 in 2000  
compromise to get other provisions  
\$45,000 to get other provisions  
Rep Perlmuter sponsor of the bill in 2000  
difficult cost of living index  
Get it [Homestead exemption] up to where it should be in 2000  
Cost of living increased 20% from 2000 to present date  
Could be higher than \$60,000

Marostica:

How to numbers compare with surrounding states?

Montgomery:

Only comparison homestead exemption

Literally all of the board, King Ranch Texas

To less than \$10,000, some southern states

SE states, low economic base

Robin Hunt:

Behalf Bankruptcy subsection

Colorado Bar Association

Good job summary

Address questions:

Medicare how related to homestead exemption

Person's resources spending down

Qualify for assistance

Homestead aims to keep people off assistance

Homestead and other encumbrances

Applies automatically

Owned and occupied

Automatic, runs with property

Not personal exemption claimed

Title 13

Title 38, Homestead, runs with the land

Interfere or take priority, has to be a waiver

Unlikely lien not waive homestead

Brother worked

Careful to look for waiver

Consensual lienholder has priority

Protects judgment lien

Homeowner's equity protected

Only if equity collect

Domestic support obligation

Possibility of abuse

Estate created on date case is filed

Maintenance and alimony owed when the case is filed

Not have ongoing right to that

Still opportunity for abuse

New reform law

Means test, determine ability to pay something back to creditors  
Income for six months before file  
Among items alimony or maintenance  
More likely to end up in a Chapter 13 case

Makes sense to exempt DSO  
Some protection DSO  
If DSO is so great, presumption of abuse  
Consistent with BR structure

Medicaid and hospital bills  
Debtor not allowed to exempt  
Personal injury proceeds from the claims of treatment providers

Comparison of our exemptions of other states  
All over the board  
Rocky Mountain economy different  
Not look at other states  
What we had done previously in Colorado  
While not a strict cost of living increase

Mitchell:  
Equity, why not target specific exemptions dealing with medical  
BR mostly medical related bills  
Broad brush encourage or reward debtors  
Big pay raise for debtors  
Otherwise shouldn't be allowed to keep  
Why increase homestead, farmers?

Hunt:  
Attempted to reflect cost of living  
Now in 1973 revised statutes  
Not kept up with cost of living  
Agreement, not revisit 6 years

Audience?  
No

Public testimony closed

Cerbo:  
Br are part of Constitution  
Look at Whole federal scheme  
Medical lead to bankruptcy  
Divorce is another

Bill product of negotiation  
Bankers, credit unions,  
Somehow it all worked out  
Ask for your approval

Lundberg:  
Inclined to support bill  
Values go further back  
Decency principle  
Balance reality, we must pay our debts  
At times that must be impossible  
Allow people to continue on the way they can  
Practical realities increase amounts, inflation takes its toll on all of us

Labuda:  
Send to committee as a whole  
With a favorable recommendation

Voice vote  
10 to 1  
Motion passes

On way to floor

Committee adjourned

Senate Bill 158 is adopted

SB 214 State funded capital projects

HOUSE 3/30/2007

Second reading

Senate Bill 158

Representative Cerbo  
I move Senate Bill 158  
This bill is the product of the Bankruptcy Section  
Of the Colorado Bar subsection  
The Code limits not amended since 2000  
These suggestions are crafted to keep pace with inflation  
Not tied to consumer price index

The Bill adds exemptions for Child Tax credits, maintenance and support obligations, disability payments and worker's compensation proceeds.

The bill has been Amended to address concerns raised by Independent Banker's Association, Colorado Banker's Association, Credit Union Association of Colorado, Colorado Collection agencies and the NFIB.

I ask for a Yes vote on this bill

Rep Mitchell:

What has happened to Personal responsibility?

Should we permit to spend without consequences

Enough permit Bankruptcy filers to expunge all of their debts

Now permit to keep more of their assets at the expense of their creditors

Yes we need a compassionate safety net

Food on table and search for new jobs

Colorado has done just that

But how much more?

What about serial filers?

Do they get exemptions doubled all current exemptions

Adds additional exemptions

Electronic and entertainment products and \$2,000 jewelry

Six year window no corrections

Encourages more Bankruptcies

Chart just personal bankruptcies

Working at the American Bankruptcy Institute

Since 2000 to 2005

Bankruptcy Soared 178% in this state

42,000 bankruptcies in 2005, \$15,000 in 2000

Colorado grown significantly

50% increase 2004 - 2005

We don't need to further fuel this growth

We need to promote personal responsibilities for one's own actions

put up second chart

This what happens if Senate Bill 158 passes

\$60,000 equity in home

disabled or senior \$90,000 equity in home

\$5,000 equity in car

\$2,000 personal effects or jewelry

file BR able to keep \$87,000 to \$143,000 assetskeep

walk away with assets

who rightfully owes debts

I ask for a no vote

Rep. Cerbo:

BR is a federal issue  
Right in Constitution  
Right goes back to Founding Fathers  
Right in Biblical times  
Feds give us the right to set exemptions

Colorado exemptions not very generous  
Just ask anyone who has gone broke  
Reasonable exemptions  
Negotiated in consultation with  
Ask for yes vote

Rep. Romer:  
Not like the concept of the Federal Bankruptcy Code  
Or any state exemptions  
Disagree with premise not like people who walk away from their debts  
Brother pastor not Biblical

Rep. Frangas:  
Dispensation 60 years or older and disabled  
Higher amount disabled  
Kids and family  
Family and Kid under age 18  
Opposed to amendment  
Include families with children under 18  
And Special dispensation?

Cerbo:  
Oppose change the bill,  
negotiation between parties  
hesitant to accept amendment  
could crater deal put together

Frangas:  
Impact on ability to obtain Medicaid  
Have answer to have higher homestead?  
Impact on ability to use Medicaid?

Rep. Labuda:  
We have been reading newspapers  
Bankruptcy caused by many people without health insurance  
These are the people helped by this bill  
Get horrendously high medical bills  
Bulk of people helped by this bill  
Raises absolutely minimal



Nobody getting rich from this  
No debtor millionaire, writes off  
This helps the people with no health insurance  
And get horrendously high medical bills  
Please support this bill

Chair:  
Voice vote  
All those in favor of Senate Bill 158 please rise  
I am putting the House Recess for a moment

House  
Second Reading  
3/30/11

all those opposed please rise  
stand to vote  
Senate Bill 158 is adopted

SB 214

House  
Third Reading

SB 88 is adopted

SB 158 read title  
4/2/2007

Chair:  
Could you begin by moving this bill?

Frangas:  
Not my bill

Garcia:  
Moves this bill

Frangas:  
I would like to move L008  
Ask permission for dreaded third reading amendment for final passage  
Senate Bill  
Request for permission  
Offers expansion of homestead exemption for working families  
Want full debate

Chair:  
Further discussion?  
Vote  
Open machine  
Close the machine

Whitmer  
Permission to offer third reading  
Clerk please open machine  
Vote  
Permission to offer third reading amendment

Frangas:  
Move L008  
Expands homestead exemption to protect  
Working families and specifically families with children  
In Florida and Texas they have unlimited homestead exemption  
\$20,000 federal standard  
if less than four years \$125,000  
other states people allowed to keep that  
should also consider working families  
parent one divorced from parents two  
parent two gets the condo  
parent one can get an apartment or  
parent one can get back into cycle of bankruptcy  
because they get \$60K exemptions  
creditors can file liens  
what I am trying to do is not continue a cycle of bankruptcy  
less than 4 years \$120,000  
exceptions seniors and disabled  
should also give consideration to families with children  
\$60K exemptions  
creditors can still file liens  
ask for aye vote

brief recess

Frangas:  
This drives an appropriation  
No idea how that is  
Withdraw amendment  
This is a good bill  
Please vote yes

Mitchell:

This bill is broke

Please vote no

Cerbo:

This bill is the product of bar association

It just raises exemptions you can declare

It is the Product of a compromise

Banks, plaintiff's lawyers

Chair:

Third reading and final passage

Open machine

Close the machine

44 aye vote, 21 no votes

Senate Bill 158 is adopted

Senate Bill 214